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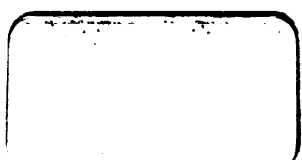
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THE
PENAL CODE
OF
CALIFORNIA.

PUBLISHED UNDER AUTHORITY OF LAW, BY

CREED HAYMOND, }
JOHN C. BURCH, } COMMISSIONERS
JOHN H. MCKUNE, } TO
REVISE THE LAWS.

SACRAMENTO:
T. A. SPRINGER, STATE PRINTER.
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OFFICE REVISION COMMISSION, STATE OF CALIFORNIA, }
SACRAMENTO, October 5th, 1872. }

We, the undersigned Commissioners to Revise the Laws of the State of California, and authorized by an Act entitled "An Act to put into effect certain parts of the Codes and to provide for their publication," approved March twelfth, eighteen hundred and seventy-two, to "furnish the State Printer with full copies of * * * such Codes, all fully arranged for publication" (see Section 13, Sudivision 5, of said Act), and to "read all proofs, and see that the printed copies agree with the originals" (see Subdivision 8 of said section), do hereby certify that this volume, entitled "PENAL CODE," is a full, true, and correct copy of the Act entitled "An Act to establish a Penal Code," approved February fourteenth, eighteen hundred and seventy-two, and contains full, true, and correct copies of all Acts amendatory thereof, properly inserted.

In testimony whereof we have hereunto set our hands, at office in the City of Sacramento, this fifth day of October, A. D. eighteen hundred and seventy-two.

CREED HAYMOND,
Chairman,
JOHN C. BURCH,
JOHN H. McKUNE,
Commissioners.

Attest: CAMERON H. KING,
WILL J. BEATTY,
Secretaries.

• CALIFORNIA CODE COMMISSION.

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A. D. SPLIVALO.

ANALYSIS OF THE CONTENTS.

DIVISIONS.

PART I.—OF CRIMES AND PUNISHMENTS.

II.—OF CRIMINAL PROCEDURE.

III.—OF THE STATE PRISON AND COUNTY JAILS.

SECTION 1. Title and Divisions of this Act..... 3

PRELIMINARY PROVISIONS.

SECTION 2. When this Act takes effect.....	6
3. Not retroactive.....	6
4. Construction of the Penal Code.....	6
5. Provisions similar to existing laws, how construed.....	6
6. Effect of Code upon past offenses.....	6
7. Certain terms defined in the senses in which they are used in this Code	6
8. What intent to defraud is sufficient.....	9
9. Civil remedies preserved.....	9
10. Proceedings to impeach or remove officers and others preserved....	10
11. Authority of Courts-martial preserved. Courts of justice to punish for contempts.....	10
12. Of sections declaring crimes punishable. Duty of Court.....	10
13. Punishments, how determined.....	10
14. Witness' testimony may be read against him on prosecution for perjury.....	10
15. "Crime" and "public offense" defined.....	11
16. Crimes, how divided	11
17. Felony and misdemeanor defined.....	11
18. Punishment of felony, when not otherwise prescribed.....	11

SECTION 19. Punishment of misdemeanor, when not otherwise prescribed.....	11
20. To constitute crime there must be unity of act and intent.....	11
21. Intent, how manifested, and who considered of sound mind.....	11
22. Drunkenness no excuse for crime. When it may be considered..	12
23. Certain statutes specified as continuing in force.....	12
24. This Act, how cited.....	14

PART I.

OF CRIMES AND PUNISHMENTS.

TITLE I.

OF PERSONS LIABLE TO PUNISHMENT FOR CRIME.

SECTION 26. Who are capable of committing crimes.....	17
27. Who are liable to punishment.....	18

TITLE II.

OF PARTIES TO CRIME.

SECTION 30. Classification of parties to crime.....	18
31. Who are principals.....	18
32. Who are accessories.....	19
33. Punishment of accessories.....	19

TITLE III.

OF OFFENSES AGAINST THE SOVEREIGNTY OF THE STATE.

SECTION 37. Treason, who only can commit.....	19
38. Misprision of treason.....	19

TITLE IV.

OF CRIMES AGAINST THE ELECTIVE FRANCHISE.

SECTION 41. Violation of election laws by certain officers a felony.....	20
42. Fraudulent registration a felony.....	21

CONTENTS.

vii

SECTION 43. Refusal to be sworn by or to answer questions of Board of Judges of Election a misdemeanor.....	21
44. Refusal to obey summons of Board of Registration a misdemeanor.....	21
45. Voting without being qualified, voting twice, and other election frauds, felonies.....	21
46. Attempting to vote without being qualified.....	22
47. Procuring illegal voting a misdemeanor.....	22
48. Changing ballots or altering returns by election officers, felonies	22
49. Inspectors unfolding or marking tickets guilty of a misdemeanor	23
50. Forging or altering returns a felony.....	23
51. Adding to or subtracting from votes given a felony.....	23
52. Persons aiding and abetting or concealing guilty of felony	23
53. Intimidating, corrupting, deceiving, or defrauding electors, a misdemeanor	24
54. Furnishing money for elections except for specified purposes.....	24
55. Unlawful offers to procure offices for electors.....	25
56. Communicating such offer.....	25
57. Bribing or offering to bribe members of legislative caucuses, etc.	25
58. Preventing public meetings.....	25
59. Disturbance of public meetings, misdemeanor.....	26
60. Betting on elections.....	26
61. Violation of election laws by persons not officers.....	26

TITLE V.

OF CRIMES BY AND AGAINST THE EXECUTIVE POWER OF THE STATE.

SECTION 65. Acting in a public capacity without having qualified.....	27
66. Acts of officers de facto not affected.....	27
67. Giving or offering bribes to executive officers.....	27
68. Asking or receiving bribes.....	27
69. Resisting officers.....	27
70. Extortion.....	28
71. Violation of laws prohibiting certain officers from dealing in scrip, etc., and from being interested in contracts.....	28
72. Fraudulently presenting bills or claims to public officers for allowance or payment.....	28
73. Buying appointments to office.....	28
74. Taking rewards for deputation.....	28
75. Exercising functions of office wrongfully..	29
76. Refusal to surrender books, etc., to successor.....	29
77. Preceding sections to apply to administrative and ministerial officers.....	29

TITLE VI.

OF CRIMES AGAINST THE LEGISLATIVE POWER.

SECTION 81. Preventing the meeting or organization of either branch of the Legislature.....	30
82. Disturbing the Legislature while in session.....	30
83. Altering draft of bill or resolution.....	30
84. Altering enrolled copy of bill or resolution.....	30
85. Giving or offering bribes to members of the Legislature.....	30
86. Receiving bribes by members of the Legislature.....	31
87. Witnesses refusing to attend, testify, or produce papers before the Legislature or committees thereof.....	31
88. Members of the Legislature, in addition to other penalties, to forfeit office and be disqualified, etc.....	31

TITLE VII.

OF CRIMES AGAINST PUBLIC JUSTICE.

CHAPTER I. Bribery and corruption.....	32
II. Rescues.....	34
III. Escapes and aiding therein.....	35
IV. Forging, stealing, mutilating, and falsifying judicial and public records and documents.....	36
V. Perjury and subornation of perjury.....	38
VI. Falsifying evidence.....	40
VII. Other offenses against public justice.....	41
VIII. Conspiracy.....	51

CHAPTER I.

BRIBERY AND CORRUPTION.

SECTION 92. Giving bribes to Judges, jurors, referees, etc.....	32
93. Receiving bribes by judicial officers, jurors, etc.....	32
94. Extortion.....	33
95. Improper attempts to influence jurors, referees, etc.....	33
96. Misconduct of jurors, referees, etc.....	33
97. Justice or Constable purchasing judgment.....	34
98. Officers to forfeit and be disqualified from holding office.....	34

CHAPTER II.

RESCUES.

SECTION 101. Rescuing prisoners.....	34
102. Retaking goods from custody of officer.....	35

CHAPTER III.

ESCAPES AND AIDING THEREIN.

SECTION 105. Escapes from State Prison.....	35
106. Attempt to escape from State Prison.....	35
107. Escapes from other than State Prison.....	36
108. Officers suffering convicts to escape.....	36
109. Assisting prisoner to escape.....	36
110. Carrying into prison things useful to aid in an escape.....	36

CHAPTER IV.

FORGING, STEALING, MUTILATING, AND FALSIFYING JUDICIAL AND PUBLIC RECORDS AND DOCUMENTS.

SECTION 113. Larceny, destruction, etc., of records by officers having them in custody.....	36
114. Larceny, destruction, etc., of records by other persons.....	37
115. Offering false or forged instruments to be filed of record.....	37
116. Adding names, etc., to jury lists.....	37
117. Falsifying jury lists, etc.....	37

CHAPTER V.

PERJURY AND SUBORNATION OF PERJURY.

SECTION 118. Perjury defined.....	38
119. Oath defined	38
120. Oath of office.....	38
121. Irregularity in administering.....	38
122. Incompetency of witness no defense.....	39
123. Witness' knowledge of materiality of his testimony not necessary	39
124. Making depositions, etc., when deemed complete.....	39
125. Statement of that which one does not know to be true.....	39
126. Punishment of perjury.....	39
127. Subornation of perjury.....	39
128. Procuring the execution of innocent person.....	39

CHAPTER VI.

FALSIFYING EVIDENCE.

SECTION 132. Offering false evidence.....	40
133. Deceiving a witness	40

SECTION 134. Preparing false evidence.....	40
135. Destroying evidence.....	40
136. Preventing or dissuading witness from attending.....	41
137. Bribing witnesses.....	41
138. Taking or offering to take bribes.....	41

CHAPTER VII.

OTHER OFFENSES AGAINST PUBLIC JUSTICE.

SECTION 142. Officer refusing to receive or arrest parties charged with crime...	42
143. Public Administrator, neglect of duty or violation of duty by...	42
144. Receiving fee or compensation for services rendered in arresting fugitives from justice.....	43
145. Delaying to take person arrested before a magistrate.....	43
146. Making arrests, etc., without lawful authority	43
147. Inhumanity to prisoners.....	43
148. Resisting public officers in the discharge of their duties.....	43
149. Assaults, etc., by officers, under color of authority.....	43
150. Refusing to aid officers in arrest, etc.....	44
151. Taking extra-judicial oaths.....	44
152. Administering extra-judicial oaths.....	44
153. Compounding crimes.....	45
154. Debtor fraudulently concealing his property.....	45
155. Defendant fraudulently concealing his property.....	45
156. Fraudulent pretenses relative to birth of infant.....	46
157. Substituting one child for another.....	46
158. Common barratry defined. How punished.....	46
159. What proof is required.....	46
160. Misconduct by attorneys.....	46
161. Buying demands or suit by an attorney.....	47
162. Attorneys forbidden to defend prosecutions carried on by their partners or formerly by themselves.....	47
163. Limitation of preceding section.....	47
164. Grand Juror acting after challenge has been allowed.....	47
165. Bribing members of Common Councils, Boards of Supervisors, or Trustees.....	48
166. Criminal contempts.....	48
167. False certificates by public officers.....	49
168. Disclosing fact of indictment or presentment having been found or made.....	49
169. Grand Juror disclosing what transpired before the Grand Jury	49
170. Maliciously procuring search warrant.....	49
171. Unauthorized communication with convict in the State Prison..	50
172. Keeping liquor within two miles of State Prison.....	50
173. Importing foreign convicts.....	50
174. Bringing Chinese into the State.....	50

CONTENTS.

xi

SECTION 175. Separate and distinct prosecutions.....	51
176. Omission of duty by public officer.....	51
177. Commission of prohibited acts, when no penalty is prescribed...	51

CHAPTER VIII.

CONSPIRACY.

SECTION 182. Criminal conspiracy defined and punishment fixed.....	51
183. No other conspiracies punishable criminally.....	52
184. Overt act, when necessary	52

TITLE VIII.

OF CRIMES AGAINST THE PERSON.

CHAPTER I. Homicide.....	53
II. Mayhem.....	56
III. Kidnapping.....	57
IV. Robbery.....	57
V. Attempts to kill.....	58
VI. Assaults with intent to commit felony, other than assaults with intent to murder.....	58
VII. Duels and challenges.....	59
VIII. False imprisonment	61
IX. Assault and battery	61
X. Libel	62

CHAPTER I.

HOMICIDE.

SECTION 187. Murder defined.....	53
188. Malice defined.....	53
189. Degrees of murder.....	53
190. Punishment of murder.....	53
191. Petit treason abolished	54
192. Manslaughter defined. Voluntary and involuntary manslaughter	54
193. Punishment of manslaughter.....	54
194. Deceased must die within a year and a day.....	54
195. Excusable homicide.....	54
196. Justifiable homicide by public officers.....	55
197. Justifiable homicide by other persons.....	55
198. Bare fear not to justify killing.....	56
199. Justifiable and excusable homicide not punishable.....	56

CHAPTER II.

MAYHEM.

SECTION 203. Mayhem defined.....	56
204. Mayhem, how punishable.....	56

CHAPTER III.

KIDNAPPING.

SECTION 207. Kidnapping defined.....	57
208. Punishment of kidnapping.....	57

CHAPTER IV.

ROBBERY.

SECTION 211. Robbery defined.....	57
212. What fear may be an element in robbery.....	58
213. Punishment of robbery.....	58

CHAPTER V.

ATTEMPTS TO KILL.

SECTION 216. Administering poison.....	58
217. Assault with intent to commit murder.....	58

CHAPTER VI.

ASSAULTS WITH INTENT TO COMMIT FELONY, OTHER THAN ASSAULTS
WITH INTENT TO MURDER.

SECTION 220. Assaults with intent to commit rape.....	59
221. Other assaults.....	59
222. Administering stupefying drugs.....	59

CHAPTER VII.

DUELS AND CHALLENGES.

SECTION 225. Duel defined.....	59
226. Punishment for fighting a duel, when death ensues.....	60
227. Punishment for fighting a duel, although death does not ensue...	60
228. Persons fighting duels, etc., disqualified from holding office, etc.	60

CONTENTS.

xiii

SECTION 229. Posting for not fighting.....	60
230. Duties of officers to prevent duels.....	60
231. Leaving the State with intent to evade laws against dueling.....	60
232. Witness' privilege.....	61

CHAPTER VIII.

FALSE IMPRISONMENT.

SECTION 236. False imprisonment defined.....	61
237. False imprisonment, how punished.....	61

CHAPTER IX.

ASSAULT AND BATTERY.

SECTION 240. Assault defined.....	61
241. Assault, how punished.....	62
242. Battery defined.....	62
243. Battery, how punished.....	62
244. Assaults with caustic chemicals.....	62
245. Assaults with deadly weapons.....	62

CHAPTER X.

LIBEL.

SECTION 248. Libel defined.....	63
249. Punishment of libel.....	63
250. Malice presumed.....	63
251. Truth may be given in evidence. Jury to determine law and fact.....	63
252. Publication defined.....	63
253. Liability of editors and publishers.....	64
254. Publishing a true report of public official proceedings privileged	64
255. Extent of privilege.....	64
256. Other privileged communications.....	64
257. Threatening to publish libel. Offer to prevent publication, with intent to extort money.....	64

TITLE IX.

OF CRIMES AGAINST THE PERSON AND AGAINST PUBLIC DECENCY AND GOOD MORALS.

CHAPTER I. Rape, abduction, carnal abuse of children, and seduction.....	65
II. Abandonment and neglect of children.....	68

CHAPTER III. Abortions	69
IV. Child stealing.....	69
V. Bigamy, incest, and the crime against nature.....	70
VI. Violating sepulture and the remains of the dead.....	71
VII. Crimes against religion and conscience, and other offenses against good morals.....	73
VIII. Indecent exposure, obscene exhibitions, books, and prints, and bawdy and other disorderly houses.....	77
IX. Lotteries.....	79
•X. Gaming	81
XI. Pawnbrokers	83
XII. Other injuries to persons.....	84

CHAPTER I.

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, AND SEDUCTION.

SECTION 261. Rape defined.....	65
262. When physical ability must be proved	66
263. Penetration sufficient.....	66
264. Punishment of rape.....	66
265. Abduction of women.....	66
266. Seduction for purposes of prostitution.....	67
267. Abduction	68

CHAPTER II.

ABANDONMENT AND NEGLECT OF CHILDREN.

SECTION 270. Omitting to provide child with necessities.....	68
271. Deserting child.....	68

CHAPTER III.

ABORTIONS.

SECTION 274. Administering drugs, etc., with intent to produce miscarriage...	69
275. Submitting to an attempt to produce miscarriage	69

CHAPTER IV.

CHILD STEALING.

SECTION 278. Definition and punishment of child stealing.....	69
---	----

CHAPTER V.

BIGAMY, INCEST, AND THE CRIME AGAINST NATURE.

SECTION 281. Bigamy defined	70
282. Exceptions.....	70
283. Punishment of bigamy.....	70
284. Marrying a husband or wife of another.....	70
285. Incest.....	71
286. Crime against nature.....	71
287. Penetration sufficient to complete the crime.....	71

CHAPTER VI.

VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD.

SECTION 290. Unlawful mutilation or removal of dead bodies. Not to apply to certain persons.....	71
291. Unlawful removal of dead body from grave for dissection, etc....	71
292. Who are charged with the duty of burial.....	72
293. Punishment for omitting to bury.....	72
294. Who are entitled to custody of a body.....	73
295. Arresting or attaching a dead body.....	73
296. Defacing tombs and monuments.....	73

CHAPTER VII.

OF CRIMES AGAINST RELIGION AND CONSCIENCE, AND OTHER OFFENSES AGAINST GOOD MORALS.

SECTION 299. Barbarous and noisy amusements, and theaters where liquors are sold, prohibited on Sunday.....	74
300. Keeping open places of business on Sunday.....	74
301. Limitation on operation of preceding section.....	74
302. Disturbing religious meetings.....	74
303. Sale of liquors at theaters and employing women to sell liquors thereat.....	75
304. Selling liquors at camp meeting.....	75
305. Limitation of preceding section.....	75
306. Procuring female under seventeen years of age to play musical instruments in public. Female under seventeen playing musical instruments in public.....	75
307. Procuring female under seventeen years of age to exhibit herself for hire. Female under seventeen exhibiting herself for hire.....	76

CHAPTER VIII.

INDECENT EXPOSURE, OBSCENE EXHIBITIONS, BOOKS AND PRINTS,
AND BAWDY AND OTHER DISORDERLY HOUSES.

SECTION 311. Indecent exposures, exhibitions, and pictures.....	77
312. Seizure of indecent articles authorized.....	78
313. Their character to be summarily determined.....	78
314. Their destruction.....	78
315. Keeping or residing in a house of ill-fame.....	78
316. Keeping disorderly houses.....	79

CHAPTER IX.

LOTTERIES.

SECTION 319. Lottery defined.....	79
320. Punishment for drawing lottery.....	79
321. Punishment for selling lottery tickets.....	79
322. Aiding lotteries	80
323. Lottery offices. Advertising lottery offices.....	80
324. Insuring lottery tickets. Publishing offers to insure.....	80
325. Property offered for disposal in lottery forfeited.....	80
326. Letting building for lottery purposes.....	81

CHAPTER X.

GAMING.

SECTION 330. Gaming prohibited. Penalty.....	81
331. Permitting gambling in houses owned or rented.....	82
332. Winning at play by fraudulent means.....	82
333. Witnesses neglecting or refusing to attend trial.....	82
334. Witness' privilege.....	82
335. Duties of District Attorneys, Sheriffs, and others.....	82

CHAPTER XI.

PAWNBROKERS.

SECTION 338. Pawnbroking without license.....	83
339. Failing to keep a register.....	83
340. Charging unlawful rate of interest	83
341. Selling before time of redemption has expired, or without notice	83
342. Refusing to disclose particulars of sale.....	84
343. Refusing to allow an officer with search warrant to inspect register of pledged articles	84

CHAPTER XII.

OTHER INJURIES TO PERSONS.

SECTION 346. Acts of intoxicated physicians.....	85
347. Willfully poisoning food, medicine, or water.....	85
348. Mismanagement of steamboats.....	85
349. Mismanagement of steam boilers	85
350. Counterfeiting trade marks.....	86
351. Selling goods which bear counterfeit trade marks.....	86
352. Definition of the phrase "counterfeited trade marks," etc.....	86
353. "Trade mark" defined.....	86
354. Refilling casks, etc., bearing trade mark.....	86
355. Defacing marks upon wrecked property and destroying bills of lading.....	87
356. Defacing marks upon logs, lumber, or wood.....	87
357. Altering brands.....	87
358. Frauds in affairs of special partnership.....	87
359. Contracting or solemnizing incestuous or forbidden marriages...	87
360. Making false return or record of marriage.....	88
361. Cruel treatment of lunatics, etc.....	88
362. Refusing to issue or obey writ of habeas corpus.....	88
363. Reconfining persons discharged upon writ of habeas corpus	88
364. Concealing persons entitled to benefit of habeas corpus.....	88
365. Innkeepers and carriers refusing to receive guests and passengers	88
366. Counterfeiting quicksilver stamps.....	89
367. Selling debased quicksilver.....	89

TITLE X.

OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.

SECTION 368. Death from explosions, etc.....	90
369. Death from collision on railroads.....	90
370. "Public nuisances" defined.....	90
371. Unequal damage.....	90
372. Maintaining a nuisance, a misdemeanor.....	91
373. Establishing or keeping pest houses within cities, towns, or villages	91
374. Putting dead animals in streets, rivers, etc.....	91
375. Keeping gunpowder, etc., unlawfully.....	91
376. Violation of quarantine laws by masters of vessels.....	92
377. Willful violation of health laws.....	92
378. Neglecting to perform duties under health law.....	92
379. Unlicensed piloting.....	93

SECTION 380. Apothecary omitting to label drugs, or labeling them wrong- fully, etc.....	93
381. Putting extraneous substances in packages of goods usually sold by weight, with intent to increase weight.....	93
382. Adulterating food, drugs, liquors, etc.....	93
383. Disposing of tainted food, etc.....	94
384. Setting woods on fire.....	94
385. Obstructing attempts to extinguish fires.....	95
386. Maintaining bridge or ferry without authority.....	95
387. Violating condition of undertaking to keep ferry.....	95
388. Riding or driving faster than a walk on toll bridges.....	95
389. Crossing toll bridges, etc., without paying toll.....	95
390. Engineer of locomotive engine omitting to ring bell when cross- ing highway.....	96
391. Intoxication of engineers, conductors, or drivers of locomotives or cars.....	96
392. Placing passenger cars in front of freight cars.....	96
393. Violation of duty by employes of railroad companies.....	96
394. Exposing person infected with any contagious disease in a public place	97
395. Frauds practiced to affect the market price.....	97
396. Racing upon highways.....	97
397. Selling liquor to Indians.....	97
398. Selling firearms and ammunition to Indians.....	97
399. Death from mischievous animals.....	98

TITLE XI.

OF CRIMES AGAINST THE PUBLIC PEACE.

SECTION 403. Disturbance of public meetings, other than religious or political	98
404. "Riot" defined.....	99
405. Riot, punishment of.....	99
406. "Rout" defined.....	99
407. "Unlawful assembly" defined.....	99
408. Punishment of rout and unlawful assembly.....	99
409. Remaining present at place of riot, etc., after warning to dis- perse	99
410. Magistrates neglecting or refusing to disperse rioters.....	99
411. Consequence of resisting process after a county has been declared in a state of insurrection.....	100
412. Prize fights.....	100
413. Persons present at prize fights.....	100
414. Leaving the State to engage in prize fights.....	100
415. Disturbing the peace in night time.....	100
416. Refusing to disperse upon lawful command.....	101
417. Exhibiting deadly weapon in rude, etc., manner, or using the same unlawfully.....	101

CONTENTS.

xix

SECTION 418. Forcible entry and detainer.....	101
419. Returning to take possession of lands after being removed by legal proceedings.....	101

TITLE XII.

OF CRIMES AGAINST THE REVENUE AND PROPERTY OF THIS STATE.

SECTION 424. Embezzlement and falsification of accounts by public officers....	102
425. Officers neglecting to pay over public moneys.....	103
426. "Public moneys," as used in the preceding section, defined.....	103
427. Failure to pay over fines and forfeitures received, a misdemeanor	103
428. Obstructing officer in collecting revenue.....	104
429. Refusing to give Assessor list of property, or giving false name	104
430. Making false statements, not under oath, in reference to taxes	104
431. Delivering receipts for poll taxes, other than prescribed by law, or collecting poll taxes, etc., without giving the receipt prescribed by law.....	104
432. Having blank receipts for licenses, etc., other than those prescribed by law.....	104
433. <i>Repealed.</i>	
434. Refusing to give name of persons in employment, etc... ..	105
435. Carrying on business without license.....	105
436. Unlawfully acting as auctioneer.....	105
437. <i>Repealed.</i>	
438. <i>Repealed.</i>	
439. Effecting insurance on account of foreign companies that have not complied with the laws of this State.....	105
440. Officer charged with collection, etc., of revenue, refusing to permit inspection of his books.....	106
441. Board of Examiners, Controller, and Treasurer neglecting certain duties.....	106
442. Having State arms, etc.....	106
443. Selling State arms, etc.....	106

TITLE XIII.

OF CRIMES AGAINST PROPERTY.

CHAPTER I. Arson.....	107
II. Burglary and housebreaking.....	109
III. Having possession of burglarious instruments and deadly weapons	110
IV. Forgery and counterfeiting.....	110
V. Larceny.....	115
VI. Embezzlement	119

CHAPTER VII. Extortion	122
VIII. False personation and cheats	124
IX. Fraudulently fitting out and destroying vessels.....	127
X. Fraudulently keeping possession of wrecked property.....	128
XI. Fraudulent destruction of property insured.....	128
XII. False weights and measures.....	129
XIII. Fraudulent insolvencies by corporations, and other frauds in their management.....	130
XIV. Fraudulent issue of documents of title to merchandise.....	135
XV. Malicious injuries to railroad bridges, highways, bridges, and telegraphs.....	137

CHAPTER I.

ARSON.

SECTION 447. Arson defined	107
448. "Building" defined.....	107
449. "Inhabited building" defined.....	108
450. "Night time" defined.....	108
451. "Burning" defined.....	108
452. Ownership of the building.....	108
453. Degrees of arson.....	108
454. Arson of the first degree. Arson of the second degree.....	108
455. Punishment of arson.....	108

CHAPTER II.

BURGLARY AND HOUSEBREAKING.

SECTION 459. "Burglary" defined.....	109
460. Punishment of burglary.....	109
461. "Housebreaking" defined.....	109
462. Punishment of housebreaking	109
463. "Night-time" defined.....	109

CHAPTER III.

HAVING POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS.

SECTION 466. Having possession of any instrument with intent to commit burglary.....	110
467. Having possession of deadly weapons with intent to commit an assault.....	110

CHAPTER IV.

FORGERY AND COUNTERFEITING.

SECTION 470. Forgery of wills, conveyances, notes, bonds, etc. Uttering forged notes, bonds, etc. Forgery of records and official returns.....	110
471. Making false entries in records or returns.....	112
472. Forgery of public and corporate seals.....	112
473. Punishment of forgery	112
474. Forging telegraphic messages.....	112
475. Passing or receiving forged notes.....	113
476. Making, passing, or uttering fictitious bills, etc.....	113
477. Counterfeiting coin, bullion, etc.....	113
478. Punishment of counterfeiting.....	114
479. Possessing or receiving counterfeit coin, bullion, etc.....	114
480. Making or possessing counterfeit dies or plates.....	114

CHAPTER V.

LARCENY.

SECTION 484. "Larceny" defined.....	115
485. Larceny of lost property.....	116
486. Grand and petit larceny	116
487. Grand larceny defined.....	116
488. Petit larceny.....	117
489. Punishment of grand larceny.....	117
490. Punishment of petit larceny.....	117
491. Dogs property.....	117
492. Larceny of written instruments.....	117
493. Value of passage tickets.....	117
494. Written instruments completed but not delivered.....	117
495. Severing and removing part of the realty declared larceny.....	118
496. Receiver of stolen property.....	118
497. Larceny committed and stolen property received out of this State	118
498. Stealing gas.....	118
499. Stealing water.....	119
500. Larceny of goods saved from fire in San Francisco.....	119
501. Purchasing or receiving in pledge junk, etc., of minors, misdemeanor.....	119
502. Applies Sections 339, 342, and 343 to junk dealers, etc.....	119

CHAPTER VI.

EMBEZZLEMENT.

SECTION 503. "Embezzlement" defined.....	120
504. When officer, etc., of any association, guilty of embezzlement..	120

SECTION 505. When carrier or other person having property for transportation, for hire, guilty of embezzlement.	120
506. When trustee, banker, etc., guilty of embezzlement.....	120
507. When bailee, tenant, or lodger guilty of embezzlement.....	121
508. When clerk, agent, or servant guilty of embezzlement.....	121
509. Distinct act of taking.....	121
510. Evidence of debt undelivered may be subject of embezzlement...	121
511. Claim of title a ground of defense.....	121
512. Intent to restore the property is no defense.....	121
513. But actual restoration is a ground for mitigation of punishment	121
514. Punishment for embezzlement.....	122

CHAPTER VII.

EXTORTION.

SECTION 518. "Extortion" defined	122
519. What threats may constitute extortion.....	123
520. Punishment of extortion in certain cases.....	123
521. Punishment of extortion committed under color of official right	123
522. Obtaining signature by means of threats.....	123
523. Sending threatening letters with intent to extort money, etc.....	123
524. Attempts to extort money or property by means of verbal threats	123
525. Officers of railroad companies making overcharges.....	124

CHAPTER VIII.

FALSE PERSONATION AND CHEATS.

SECTION 528. Marrying under false personation.....	124
529. Falsely personating another in other cases.....	124
530. Receiving property in a false character.....	125
531. Fraudulent conveyances.....	125
532. Obtaining money by false pretenses and by false reports of wealth, etc.....	125
533. Selling land twice.....	126
534. Married person selling lands under false representations.....	126
535. Mock auction.....	126

CHAPTER IX.

FRAUDULENTLY FITTING OUT AND DESTROYING VESSELS.

SECTION 539. Captain or other officer willfully destroying vessel, etc.....	127
540. Other persons willfully destroying vessel, etc.....	127
541. Making false manifest, etc.....	127

CHAPTER X.

FRAUDULENTLY KEEPING POSSESSION OF WRECKED PROPERTY.

SECTION 544. Detaining wrecked property after salvage paid.....	128
545. Unlawfully taking or having possession of wrecked property....	128

CHAPTER XI.

FRAUDULENT DESTRUCTION OF PROPERTY INSURED.

SECTION 548. Burning or destroying property insured	128
549. Presenting false proofs in support of a claim upon policy of insurance.....	129

CHAPTER XII.

FALSE WEIGHTS AND MEASURES.

SECTION 552. "False weight" and "measure" defined.....	129
553. Using false weights or measures.....	129
554. Stamping false weight, measure, or tare on casks or packages....	129

CHAPTER XIII.

FRAUDULENT INSOLVENCIES BY CORPORATIONS, AND OTHER FRAUDS IN THEIR MANAGEMENT.

SECTION 557. Frauds in subscriptions for stock of corporations.....	130
558. Frauds in procuring organization of corporation, or increasing its capital.....	130
559. Unauthorized use of names in prospectus, etc.....	131
560. Misconduct of Directors of stock corporations.....	131
561. Savings bank officer overdrawing his account.....	132
562. Receiving deposits in insolvent banks.....	132
563. Frauds in keeping accounts in books of corporations.....	132
564. Officer of corporation publishing false reports of its condition....	133
565. Officer of corporation to permit an inspection of its books	133
566. Officer of railroad company contracting debt in its behalf exceeding its available means.....	133
567. Debt contracted in violation of last section not invalid.....	133
568. Director of a corporation presumed to have knowledge of its affairs	134
569. Director present at meeting, when presumed to have assented to proceedings.....	134

SECTION 570. Director absent from meeting, when presumed to have assented to proceedings.....	134
571. Foreign corporations.....	134
572. "Director" defined.....	134

CHAPTER XIV.

FRAUDULENT ISSUE OF DOCUMENTS OF TITLE TO MERCHANDISE.

SECTION 577. Issuing fictitious bills of lading, etc.....	135
578. Issuing fictitious warehouse receipts.....	135
579. Erroneous bills of lading or receipts issued in good faith excepted	136
580. Duplicate receipts must be marked "duplicate.".....	136
581. Selling, hypothecating, or pledging property received for transportation or storage.....	136
582. Bill of lading or receipt issued by warehouseman must be canceled on redelivery of the property.....	136
583. Property demanded by process of law.....	137

CHAPTER XV.

MALICIOUS INJURIES TO RAILROAD BRIDGES, HIGHWAYS, BRIDGES, AND TELEGRAPHS.

SECTION 587. Injuries to railroads and railroad bridges.....	137
588. Injuries to highways, private ways, and bridges.....	138
589. Injuries to toll houses and gates.....	138
590. Injuries to milestones and guide boards.....	138
591. Injuring telegraph lines.....	138

TITLE XIV.

MALICIOUS MISCHIEF.

SECTION 594. Malicious mischief in general, defined.....	139
595. Specifications in following sections not restrictive of last section..	139
596. Poisoning cattle.....	139
597. Killing, maiming, or torturing animals.....	140
598. Killing, etc., birds in cemeteries	140
599. Killing seals and sea lions within one mile of Cliff House.....	140
600. Burning buildings and other property not the subject of arson	140
601. Using gunpowder, etc., in destroying or injuring any building..	140
602. Malicious injuries to freehold.....	140
603. Limitation upon the operations of the preceding section.....	142
604. Injuries to standing crops, etc.....	142
605. Removing, defacing, or altering landmarks.....	142

CONTENTS.

XXV

SECTION 606.	Destroying or injuring jails.....	143
607.	Destroying or injuring bridges, dams, levees, water dams, etc...	143
608.	Burning or injuring rafts. Setting adrift vessels.....	143
609.	Removing buoys and beacons.....	144
610.	Masking or removing signal lights, or exhibiting false lights...	144
611.	Obstructing navigable streams.....	144
612.	Depositing sand, dust, etc., in Humboldt Bay.....	144
613.	Throwing overboard ballast, or otherwise obstructing the navigation of any harbor, etc.....	144
614.	Mooring vessels to buoys.....	144
615.	Injuries to signals, monuments, etc., erected in United States Coast Survey.....	145
616.	Destroying or tearing down notices, etc., before expiration of time for which they were to remain set up.....	145
617.	Injuring or destroying written instrument.....	145
618.	Opening or publishing sealed letters.....	145
619.	Disclosing contents of telegraphic message.....	145
620.	Altering telegraphic messages.....	146
621.	Opening sealed envelops containing telegraphic dispatches.....	146
622.	Injuring works of art or improvements in any city, town, or village.....	146
623.	Destroying works of literature, etc., in public libraries.....	146
624.	Breaking or obstructing gas or water pipes, etc.....	147
625.	Drawing water from works after they have been closed.....	147

TITLE XV.

MISCELLANEOUS CRIMES.

CHAPTER I.	Violation of the laws for the preservation of game and fish	147
II.	Of other and miscellaneous offenses	150

CHAPTER I.

VIOLATION OF THE LAWS FOR THE PRESERVATION OF GAME AND FISH.

SECTION 626.	Destruction of grouse, duck, etc., when prohibited.....	148
627.	Same	148
628.	Destruction of elk, etc., when prohibited.....	149
629.	Having game in possession during the time that killing thereof is prohibited.....	149
630.	Use of phosphorus on land in certain counties prohibited.....	149
631.	Taking trout, when prohibited.....	149
632.	Same	149
633.	Taking trout by nets, etc., prohibited.....	149

d *—PENAL.

SECTION 634. Taking salmon, when prohibited.....	150
635. Use of poisonous or explosive substances in fishing prohibited...	150
636. California Indians exempted from certain penalties.....	150
637. Fishways and ladders, penalties for not keeping.....	150

CHAPTER II.

OF OTHER AND MISCELLANEOUS OFFENSES.

SECTION 638. Neglect or postponement out of regular order of telegraphic messages. Limitations	151
639. Agent, operator, or employé using information from messages....	151
640. Clandestinely learning the contents of a telegraphic message.....	152
641. Bribing telegraphic operator.....	152
642. Collecting tolls, etc., at San Francisco, without authority of Harbor Commissioners.....	152
643. Violations of the provisions of the Chapter relating to police regulations of San Francisco harbor.....	152
644. Enticing seamen to desert.....	153
645. Harboring deserting seamen.....	153
646. Aiding apprentices to run away or harboring them.....	153
647. Vagrants	153
648. Issuing or circulating paper money.....	153
649. Officers of fire department issuing false certificates of exemption	154
650. Sending letters threatening to expose another.....	154
651. Requiring wards or apprentices to work more than eight hours..	154
652. Officer or member of National Guard failing to attend parade, obey orders, or discharge duty.....	155
653. Member of National Guard failing to attend parade, etc., when notified	155

TITLE XVI.

GENERAL PROVISIONS.

SECTION 654. Acts made punishable by different provisions of this Code....	156
655. Acts punishable under foreign law.....	156
656. Foreign conviction or acquittal.....	156
657. Contempts, how punishable.....	156
658. Mitigation of punishment in certain cases.....	157
659. Aiding in misdemeanor.....	157
660. Sending letters, when deemed complete.....	157
661. Removal from office for violation or neglect of official duty by public officers.....	157
662. Omission to perform duty, when punishable.....	157
663. Attempts to commit crimes, when punishable.....	157
664. Attempts to commit crimes, how punishable.....	158

CONTENTS.

xxvii

SECTION 665. Restrictions upon the preceding sections.....	158
666. Second offense, how punished after conviction of former offense	159
667. Second offenses, how punished after conviction of attempt to commit a State Prison offense.....	159
668. Foreign conviction for former offense.....	160
669. Second term of imprisonment, when to commence.....	160
670. When term of imprisonment commences, etc.....	160
671. Imprisonment for life.....	160
672. Fine may be added to imprisonment	161
673. Civil rights of convict suspended.....	161
674. Civil death.....	161
675. Limitations on two preceding sections.....	161
676. Person of convict protected.....	161
677. Forfeitures.....	161

PART II.

OF CRIMINAL PROCEDURE.

PRELIMINARY PROVISIONS.

SECTION 681. No person punishable but on legal conviction.....	165
682. Public offenses, how prosecuted	165
683. Criminal action defined.....	166
684. Parties to a criminal action.....	166
685. The party prosecuted known as defendant.....	166
686. Rights of defendant in a criminal action.....	166
687. Second prosecution for the same offense prohibited.....	166
688. No person to be a witness against himself in a criminal action, or to be unnecessarily restrained.....	167
689. No person to be convicted but upon verdict or judgment.....	167

TITLE I.

OF THE PREVENTION OF PUBLIC OFFENSES.

CHAPTER I. Of lawful resistance.....	167
II. Of the intervention of the officers of justice.....	168
III. Security to keep the peace.....	169
IV. Police in cities and towns, and their attendance at exposed places	171
V. Suppression of riots	172

CHAPTER I.

OF LAWFUL RESISTANCE.

SECTION 692. Lawful resistance, by whom made	168
693. By the party, in what cases and to what extent.....	168
694. By other parties, in what cases.....	168

CHAPTER II.

OF THE INTERVENTION OF THE OFFICERS OF JUSTICE.

SECTION 697. Intervention of officers, in what cases	168
698. Persons acting in their aid justified.....	168

CHAPTER III.

SECURITY TO KEEP THE PEACE.

SECTION 701. Information of threatened offense.....	169
702. Examination of complainant and witnesses.....	169
703. Warrant of arrest.....	169
704. Proceedings on charges being controverted.....	170
705. Person complained of, when to be discharged.....	170
706. Security to keep the peace, when required.....	170
707. Effect of giving or refusing to give security.....	170
708. Person committed for not giving security, how dis-charged.....	170
709. Undertaking to be filed in Clerk's office.....	170
710. Security, when required for assault committed in the presence of a Court or magistrate.....	170
711. Undertaking, when broken.....	171
712. Undertaking, when and how to be prosecuted.....	171
713. Evidence of breach.....	171
714. Security for the peace not required, except in accordance with this Chapter	171

CHAPTER IV.

POLICE IN CITIES AND TOWNS, AND THEIR ATTENDANCE AT EXPOSED PLACES.

SECTION 719. Organization and regulation of the police.....	171
720. Force to preserve the peace at public meetings, when and how ordered.....	172

CHAPTER V.

SUPPRESSION OF RIOTS.

SECTION 723. Power of Sheriff or other officer in overcoming resistance to process	172
724. The officer to certify to Court the name of the resisters, etc.....	172
725. When Governor to order out a military force to aid in executing process	173
726. Magistrates and officers to command rioters to disperse.....	173
727. To arrest rioters if they do not disperse.....	173
728. Officers who may order out the military.....	173
729. Commanding officer and troops to obey the order.....	174
730. Armed force to obey orders of whom.....	174
731. Conduct of the troops.....	174
732. Governor may in certain cases declare a county in a state of insurrection.....	175
733. May revoke the proclamation.....	175

TITLE II.

OF JUDICIAL PROCEEDINGS FOR THE REMOVAL OF PUBLIC OFFICERS BY IMPEACHMENT OR OTHERWISE.

CHAPTER I. Of impeachments	176
II. Of the removal of civil officers otherwise than by impeachment	179

CHAPTER I.

OF IMPEACHMENTS.

SECTION 737. Officers liable to impeachment.....	176
738. Articles, how prepared. Trial by Senate.....	177
739. Articles of impeachment.....	177
740. Time of hearing. Service on defendant.....	177
741. Service, how made	177
742. Proceedings on failure to appear	177
743. Defendant, after appearance, may answer or demur.....	177
744. If demurrer is overruled defendant must answer.....	178
745. Senate to be sworn	178
746. Two thirds necessary to a conviction.....	178
747. Judgment on conviction, how pronounced.....	178
748. The same.....	178
749. Nature of the judgment.....	179
750. Effect of judgment of suspension.....	179

SECTION 751. Officer, when impeached, disqualified until acquitted. Governor to temporarily fill vacancy.....	179
752. Presiding officer when Lieutenant Governor is impeached.....	179
753. Impeachment not a bar to indictment.....	179

CHAPTER II.

OF THE REMOVAL OF CIVIL OFFICERS OTHERWISE THAN BY IMPEACHMENT.

SECTION 758. Accusation to be presented by the Grand Jury.....	180
759. Form of accusation.....	180
760. To be transmitted to the District Attorney, and copy served on the defendant.....	180
761. Proceedings if defendant does not appear.....	180
762. Defendant may object to or deny the accusation.....	181
763. Form of objection.....	181
764. Manner of denial.....	181
765. If objections overruled, defendant must answer.....	181
766. Proceedings upon plea of guilty, refusal to answer, or denial...	181
767. Trial by jury.....	181
768. State and defendant entitled to process for witnesses.....	181
769. Judgment upon conviction, and its form.....	181
770. Appeal, how taken. Pending appeal, defendant to be suspended and vacancy filled.....	182
771. Proceedings for the removal of a District Attorney.....	182
772. Removal of public officers by summary proceedings before Dis- trict Courts.....	182

TITLE III.

OF THE PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT, TO THE COMMITMENT, INCLUSIVE.

CHAPTER I. Of the local jurisdiction of public offenses.....	183
II. Of the time of commencing criminal actions.....	188
III. The information.....	188
IV. The warrant of arrest.....	189
V. Arrest, by whom and how made.....	194
VI. Retaking after an escape or rescue.....	198
VII. Examination of the case and discharge of defendant, or holding him to answer.....	198

CHAPTER I.

OF THE LOCAL JURISDICTION OF PUBLIC OFFENSES.

SECTION 777.	Jurisdiction of offenses committed in this State.....	184
778.	When the offense is commenced without, but consummated within this State.....	184
779.	When an inhabitant of this State is concerned in a duel out of the same, and a party wounded dies therein	184
780.	When an inhabitant leaves the State to evade the statute against dueling or challenges to fight.....	185
781.	When an offense is committed partly in one county and partly in another.....	185
782.	When committed on the boundary, etc., of two or more counties	185
783.	Jurisdiction of an offense on board a vessel.....	185
784.	Of indictment for kidnapping, enticing away a child, or abduction	185
785.	Jurisdiction of an indictment for bigamy or incest.....	186
786.	When property is feloniously taken in one county and brought into another.....	186
787.	Jurisdiction of indictment for escaping from prison.....	186
788.	Jurisdiction of an indictment for treason, when the overt act is committed out of the State.....	186
789.	Jurisdiction of an indictment for stealing, etc., property out of this State and bringing it therein.....	187
790.	Jurisdiction of an indictment for murder, etc., where the injury was inflicted in one county, and the party dies out of that county.....	187
791.	Of an indictment against an accessory.....	187
792.	Jurisdiction in cases of principals who are not present, etc., at commission of the principal offense.....	187
793.	Conviction or acquittal in another State a bar, where the jurisdiction is concurrent	187
794.	Conviction or acquittal in another county a bar, where the jurisdiction is concurrent.....	187

CHAPTER II.

OF THE TIME OF COMMENCING CRIMINAL ACTIONS.

SECTION 799.	Prosecution for murder may be commenced at any time.....	188
800.	Limitation of three years in all other felonies.....	188
801.	Limitation of one year in misdemeanors.....	188
802.	Exception when defendant is out of the State.....	188
803.	Indictment found, when presented and filed.....	188

CHAPTER III.

THE INFORMATION.

SECTION 806. Information defined.....	189
807. Magistrate defined.....	189
808. Who are magistrates.....	189

CHAPTER IV.

THE WARRANT OF ARREST.

SECTION 811. Examination of the prosecutor and his witnesses upon the information.....	190
812. Depositions, what to contain.....	190
813. When warrant may issue.....	190
814. Form of warrant.....	190
815. Name or description of the defendant in the warrant, and statement of the offense.....	191
816. Warrant to be directed to and executed by peace officer.....	191
817. Who are peace officers.....	191
818. To what peace officers warrants are to be directed.....	191
819. Same; and when and how executed in another county.....	191
820. Indorsement on the warrant, for service in another county, how and upon what proof to be made.....	191
821. Defendant to be taken before the magistrate issuing the warrant, etc.....	192
822. Defendant arrested for misdemeanor in another county, to be admitted to bail.....	192
823. Proceedings on taking bail from the defendant in such cases.....	192
824. When bail is not given. When magistrate who issued warrant cannot act.....	192
825. No delay in taking defendant before magistrate.....	193
826. Proceedings where defendant is taken before another magistrate	193
827. Proceedings for offenses triable in another county.....	193
828. Duty of officer.....	193
829. Admission to bail.....	193

CHAPTER V.

ARREST, BY WHOM AND HOW MADE.

SECTION 834. Arrest defined. By whom made.....	194
835. How an arrest is made and what restraint allowed	194
836. Arrests by peace officers.....	195
837. Arrests by private persons.....	195
838. Magistrates may order arrest.....	195

CONTENTS.

xxxiii

SECTION 839. Persons making arrest may summon assistance.....	195
840. When the arrest may be made.....	195
841. Arrest, how made.....	196
842. Warrant must be shown, when.....	196
843. What force may be used.....	196
844. Doors and windows may be broken, when.....	196
845. Same	196
846. Weapons may be taken from persons arrested.....	196
847. Duty of a private person who has made an arrest	197
848. Duty of officer arresting with warrant.....	197
849. Person arrested without a warrant to be taken before a magis- trate. Information to be filed.....	197
850. Arrest by telegraph.....	197
851. Same	197

CHAPTER VI.

RETAKING AFTER AN ESCAPE OR RESCUE.

SECTION 854. May be at any time or in any place in the State.....	198
855. May break open door or window if admittance refused.....	198

CHAPTER VII.

EXAMINATION OF THE CASE, AND DISCHARGE OF THE DEFENDANT, OR HOLDING HIM TO ANSWER.

SECTION 858. Magistrate to inform the defendant of the charge, and his right to counsel.....	199
859. Time to send and sending for counsel.....	199
860. Examination, when to proceed.....	199
861. When to be completed. Postponement.....	199
862. On postponement, defendant to be committed or discharged on bail.....	200
863. Form of commitment.....	200
864. Depositions to be read on examination and subpoenas issued	200
865. Examination of witnesses to be in presence of defendant, and his right to cross-examine.....	200
866. Examination of defendant's witnesses.....	200
867. Exclusion and separation of witnesses.....	200
868. Who may be present at the examination.....	200
869. Testimony, how taken and authenticated	201
870. Deposition, by whom and how kept.....	201
871. Defendant, when and how discharged.....	201
872. When and how to be committed.....	202
873. Order for commitment.....	202

SECTION 874. Certificate of bail being taken.....	202
875. Order for bail on commitment.....	202
876. Commitment, how made and to whom delivered.....	202
877. Form of commitment.....	203
878. Undertaking of witnesses to appear, when and how taken.....	203
879. Security for the appearance of witnesses, when and how required	203
880. Infants and married women may be required to give security....	203
881. Witnesses to be committed on refusal to give security for their appearance.....	204
882. Witness unable to give security may be conditionally exam- ined. Not applicable to prosecutor or accomplice.....	204
883. Magistrate to return depositions, etc., to the Court.....	204

TITLE IV.

OF PROCEEDINGS AFTER COMMITMENT AND BEFORE INDICT- MENT.

CHAPTER I. Preliminary provisions.....	205
II. Formation of the Grand Jury.....	206
III. Powers and duties of a Grand Jury.....	209
IV. Presentment and proceedings thereon.....	212

CHAPTER I.

PRELIMINARY PROVISIONS.

SECTION 888. What prosecutions must be by indictment.....	205
889. What by accusation or information.....	205
890. Indictments and accusations, in what Court found.....	205

CHAPTER II.

FORMATION OF THE GRAND JURY.

SECTION 894. Who may challenge the panel or an individual juror.....	206
895. Cause of challenge to a panel.....	206
896. Cause of challenge to an individual grand juror.....	206
897. Manner of taking and trying challenges.....	206
898. Decision upon challenges.....	207
899. Effect of allowing a challenge to a panel.....	207
900. Effect of allowing challenge to an individual juror.....	207
901. Objections can only be taken by challenge.....	207
902. Appointment of a foreman.....	207
903. Oath of foreman.....	207
904. Oath of other grand jurors	208
905. Charge of the Court.....	208

CONTENTS.

XXXV

SECTION 906. Retirement of the Grand Jury. Discharge of.....	208
907. Special Grand Jury.....	208
908. Order for special Grand Jury.....	209
909. Order, how executed.....	209
910. Special Grand Jury, how formed.....	209

CHAPTER III.

POWERS AND DUTIES OF A GRAND JURY.

SECTION 915. Powers of Grand Jury.....	209
916. Presentment defined.....	210
917. Indictment defined.....	210
918. Foreman may administer oaths.....	210
919. Evidence receivable before the Grand Jury.....	210
920. Grand Jury not bound to hear evidence for the defendant, but may order explanatory evidence, etc.....	210
921. Degree of evidence to warrant indictment.....	210
922. Grand Jurors must declare their knowledge as to commission of public offense	211
923. Must inquire into cases of persons imprisoned, etc.....	211
924. Entitled to access to public prison, etc.....	211
925. When and from whom they may ask advice, and who may be present during their sessions.....	211
926. Secrets of Grand Jury to be kept, except, etc.....	212
927. Grand Juror not to be questioned for his conduct, except, etc....	212

CHAPTER IV.

PRESENTMENT AND PROCEEDINGS THEREON.

SECTION 931. Presentment must be by twelve Grand Jurors, etc.....	213
932. Must be presented to the Court and filed.....	213
933. If the facts stated in the presentment constitute a public offense, the Court must direct a bench warrant.....	213
934. Bench warrant, by whom and how issued.....	213
935. Form of bench warrant.....	213
936. Bench warrant, how served.....	214
937. Proceedings of magistrate on defendant being brought before him	214

TITLE V.

OF THE INDICTMENT.

CHAPTER I. Finding and presentment of the indictment.....	214
II. Rules of pleading and form of the indictment	215

CHAPTER I.

FINDING AND PRESENTMENT OF THE INDICTMENT.

SECTION 940. Indictment must be found by twelve jurors, indorsed, etc.....	214
941. If not found depositions, etc., must be returned to Court, etc.....	215
942. Effect of dismissal.....	215
943. Names of witnesses inserted at foot of indictment.....	215
944. Indictment, how presented and filed.....	215
945. Proceedings when defendant is not in custody.....	215

CHAPTER II.

RULES OF PLEADING AND FORM OF THE INDICTMENT.

SECTION 948. Form of and rules of pleading.....	216
949. First pleading by the people is indictment.....	216
950. Indictment, what to contain	216
951. Form of indictment.....	217
952. Indictment must be direct and certain.....	217
953. When defendant is indicted by fictitious name, etc.....	217
954. The indictment must charge but one offense and in one form, except where it may be committed by different means	217
955. Statement as to time when offense was committed.....	217
956. Statement as to person injured or intended to be.....	218
957. Construction of words used in an indictment.....	218
958. Words used in a statute need not be strictly pursued.....	218
959. Indictment, when sufficient.....	218
960. Indictment not insufficient for defect of form not tending to prejudice defendant.....	219
961. Presumptions of law, etc., need not be stated.....	219
962. Judgments, etc., how pleaded.....	219
963. Private statutes, how pleaded.....	219
964. Pleading in indictment for libel.....	219
965. Pleading in indictment for forgery, where instrument has been destroyed or withheld by defendant.....	220
966. Pleading in an indictment for perjury or subornation of perjury	220
967. Pleading in indictment for larceny or embezzlement.....	220
968. Pleading in an indictment for selling, exhibiting, etc., lewd and obscene books, etc.....	220
969. Previous conviction of another offense, how stated in indictment	221
970. Indictment against several, one or more may be acquitted.....	221
971. Distinction between accessory before the fact and principal abro- gated. Principals, how indicted, etc.....	221
972. Accessory may be indicted and tried, though principal has not been.....	221

TITLE VI.

OF PLEADINGS AND PROCEEDINGS AFTER INDICTMENT AND BEFORE THE COMMENCEMENT OF THE TRIAL.

CHAPTER I. Of the arraignment of the defendant.....	222
II. Setting aside the indictment	226
III. Demurrer.....	228
IV. Plea.....	230
V. Transmission of certain indictments from the County Court to the District Court or Municipal Criminal Court of San Francisco.....	232
VI. Removal of the action before trial.....	233
VII. The mode of trial	234
VIII. Formation of the trial jury and the calendar of issues for trial...	235
IX. Postponement of the trial.....	236

CHAPTER I.

OF THE ARRAIGNMENT OF THE DEFENDANT.

SECTION 976. Defendant must be arraigned in the Court where the indictment was found or sent.....	223
977. Defendant, when to be present at arraignment.....	223
978. If in custody, to be brought before Court.....	223
979. If discharged on bail, bench warrant to issue.....	223
980. Bench warrant, by whom and how issued.....	223
981. Form of bench warrant.....	223
982. Directions in the bench warrant, if the offense is bailable. Order for bail to be indorsed.....	224
983. Bench warrant, how served.....	224
984. Proceeding on giving bail in another county.....	224
985. Ordering defendant into custody or increasing bail when indictment is for felony.....	225
986. Defendant, if present when order made, to be committed; if not, bench warrant to issue.....	225
987. Defendant, on arraignment, to be informed of his right to counsel. When Court to assign counsel.....	225
988. Arraignment, how made.....	225
989. Proceedings on arraignment, when defendant is not indicted by his true name.....	225
990. Time allowed, and how defendant may answer on arraignment..	226

CHAPTER II.

SETTING ASIDE THE INDICTMENT.

SECTION 995. Indictment, when set aside on motion.....	226
996. Defendant waives objections, unless he makes the motion	227

SECTION 997. Motion, when heard. If denied or granted, what proceedings are to be had.....	227
998. Effect of order for submission.....	227
999. Order no bar to another prosecution.....	227

CHAPTER III.

DEMURRER.

SECTION 1002. Pleading on part of defendant.....	228
1003. Demurrer or plea, when put in.....	228
1004. Grounds of demurrer.....	228
1005. Demurrer, how put in, and its form	229
1006. When heard.....	229
1007. Judgment on demurrer.....	229
1008. If allowed, bar to another prosecution; when.....	229
1009. If resubmission not ordered, defendant discharged, etc.....	229
1010. Proceedings, if submission ordered.....	229
1011. Proceedings, if demurrer is disallowed	229
1012. When objections, forming ground of demurrer, must or may be taken.....	229

CHAPTER IV.

PLEA.

SECTION 1016. The different kinds of pleas.....	230
1017. Plea, how put in, and its form.....	230
1018. Plea of guilty, how put in, and when it may be withdrawn....	231
1019. What plea of not guilty puts in issue.....	231
1020. What may be given in evidence under plea of not guilty.....	231
1021. What is not a former acquittal.....	231
1022. What is a former acquittal.....	231
1023. Conviction or acquittal on an indictment for a higher offense, effect of.....	231
1024. Defendant refusing to answer, plea of not guilty to be entered..	232

CHAPTER V.

TRANSMISSION OF CERTAIN INDICTMENTS FROM THE COUNTY COURT TO THE DISTRICT COURT OR MUNICIPAL CRIMINAL COURT OF SAN FRANCISCO.

SECTION 1028. Transmission of indictments from the County to District Courts	232
1029. Indictments against a County Judge to be transmitted to District Court.....	232
1030. Indictments to be transmitted to the Municipal Criminal Court of San Francisco.....	232

CHAPTER VI.

REMOVAL OF THE ACTION BEFORE TRIAL.

SECTION 1033. When action may be removed.....	233
1034. Application for removal, how made	233
1035. Application, when granted.....	233
1036. Order of removal.....	234
1037. Proceedings on removal, if defendant is in custody.....	234
1038. Authority of Court to which action is removed. When original papers must be transmitted.....	234

CHAPTER VII.

THE MODE OF TRIAL.

SECTION 1041. Issue of fact defined.....	234
1042. How tried.....	234
1043. When presence of defendant is necessary on the trial.....	235

CHAPTER VIII.

FORMATION OF THE TRIAL JURY AND THE CALENDAR OF ISSUES FOR TRIAL.

SECTION 1046. Formation of trial jury.....	235
1047. Clerk to prepare a calendar.....	235
1048. Order of disposing of issues on the calendar.....	235
1049. Defendant entitled to two days to prepare for trial.....	236

CHAPTER IX.

POSTPONEMENT OF THE TRIAL.

SECTION 1052. Postponement, when, and how ordered.....	236
--	-----

TITLE VII.

OF PROCEEDINGS AFTER THE COMMENCEMENT OF THE TRIAL AND BEFORE JUDGMENT.

CHAPTER I. Challenging the jury.....	237
II. The trial.....	244
III. Conduct of the jury after cause is submitted to them.....	245
IV. The verdict	257

CHAPTER V. Bills of exception.....	262
VI. New trials	264
VII. Arrest of judgment.....	265

CHAPTER I.

CHALLENGING THE JURY.

SECTION 1055. Definition and division of challenges.....	238
1056. Defendants cannot sever in challenges.....	238
1057. Panel defined	238
1058. Challenge to the jury defined.....	238
1059. Upon what founded.....	238
1060. When and how taken.....	238
1061. If sufficiency of the challenge be denied, adverse party may except. Exception, how taken and tried.....	238
1062. If exception overruled, Court may allow denial, etc.....	239
1063. Denial of challenge, how made, and trial thereof. Who may be examined on trial of challenge	239
1064. Challenge when jury is summoned but not drawn, for bias in summoning officer.....	239
1065. If challenge allowed, jury to be discharged; if disallowed, to be impaneled	239
1066. Defendant to be informed of his right to challenge individual jurors.....	239
1067. Kinds of challenges to individual juror.....	240
1068. Challenge, when taken.....	240
1069. Peremptory challenge, what, and how taken.....	240
1070. Number of peremptory challenges.....	240
1071. Definition and kinds of challenge, for cause.....	240
1072. General causes of challenge.....	240
1073. Particular cause of challenge.....	240
1074. Ground of challenge for actual bias.....	241
1075. Exemption not a ground of challenge	242
1076. Causes of challenge, how stated.....	242
1077. Exceptions to challenge, and denial thereof.....	242
1078. Challenge, how tried	242
1079. Triers, how appointed. Majority may decide.....	243
1080. Oath of trier.....	243
1081. Juror challenged may be examined as a witness.....	243
1082. Rules of evidence on trial of challenge.....	243
1083. Challenge for implied bias, how determined.....	243
1084. Instructions to triers on trial of challenge for actual bias.....	243
1085. Verdict of triers, and its effect.....	244
1086. Challenges, first by the defendant and then by the people.....	244
1087. Order of challenges.....	244
1088. Peremptory challenges may be taken after challenges for cause on both sides are exhausted.....	244

CHAPTER II.

THE TRIAL.

SECTION 1093.	Order of trial	246
1094.	When order of trial may be departed from.....	246
1095.	Number of counsel who may argue the case to the jury.....	246
1096.	Defendant presumed innocent until the contrary is proved. Reasonable doubt.....	247
1097.	When reasonable doubt as to degree, he can be convicted only of lowest.....	247
1098.	Separate trials.....	247
1099.	Discharging one of several defendants before verdict, that he may be a witness.....	247
1100.	Same	247
1101.	Effect of such discharge.....	247
1102.	Rules of evidence in civil applicable to criminal cases, except, etc	248
1103.	Evidence on trial for treason.....	248
1104.	Evidence on trial for conspiracy.....	248
1105.	When burden of proof shifts in trials for murder	248
1106.	Evidence on a trial for bigamy.....	248
1107.	Evidence upon a trial for forging bank bills, etc. Experts.....	248
1108.	Evidence upon trial for abortion and seduction.....	249
1109.	Evidence on a trial for selling, etc., lottery tickets	249
1110.	Evidence of false pretenses.....	249
1111.	Conviction cannot be had on uncorroborated testimony of ac- complice.....	250
1112.	If the evidence show higher offense than the one charged, pro- ceedings to be had thereon.....	250
1113.	Court may discharge jury when it has not jurisdiction, etc.....	250
1114.	Proceedings, if jury discharged for want of jurisdiction of offense committed out of the State.....	251
1115.	Proceedings in such case, when offense committed in the State	251
1116.	Same	251
1117.	Proceedings, if jury discharged because the facts do not consti- tute an offense	252
1118.	When evidence on either side is closed, Court may advise jury to acquit.....	252
1119.	View of premises, when ordered and how conducted.....	252
1120.	Knowledge of juror to be declared in Court, and he to be sworn as a witness.....	252
1121.	Jurors may be permitted to separate during trial. If kept to- gether, oath of officer.....	253
1122.	Jury at each adjournment must be admonished, etc.....	253
1123.	Proceedings when juror becomes unable to perform his duties..	253
1124.	Court to decide questions of law arising during trial.....	253

SECTION 1125. On indictment for libel, jury to determine law and fact.....	254
1126. In all other cases Court to decide questions of law.....	254
1127. Charging the jury.....	254
1128. Jury may decide in Court or retire in custody of officers. Oath of officers.....	254
1129. When defendant on bail appears for trial he may be committed	254
1130. If District Attorney fails to attend, Court may appoint.....	255

CHAPTER III.

CONDUCT OF THE JURY AFTER THE CAUSE IS SUBMITTED TO THEM.

SECTION 1135. Room and accommodations for the jury after retirement, how provided.....	255
1136. Accommodations for jury when kept together.....	255
1137. What papers the jury may take with them.....	256
1138. If after retirement may return into Court for information.....	256
1139. If juror after retirement become sick, etc., jury to be discharged	256
1140. Not to be discharged for any other cause, unless there is no reasonable probability that they can agree.....	256
1141. When jury discharged or prevented from giving a verdict, cause to be again tried.....	257
1142. Court may adjourn during absence of jury, but deemed open for all purposes connected with cause.....	257
1143. Final adjournment discharges jury.....	257

CHAPTER IV.

THE VERDICT.

SECTION 1147. Return of jury	258
1148. Appearance of defendant.....	258
1149. Manner of taking verdict.....	258
1150. Verdict may be general or special.....	258
1151. General verdict.....	258
1152. Special verdict.....	258
1153. Special verdict, how rendered.....	259
1154. Form of special verdict.....	259
1155. Judgment on special verdict.....	259
1156. When special verdict defective, new trial to be ordered.....	259
1157. Jury to find degree of crime.....	259
1158. Jury may find upon charge of previous conviction.....	259
1159. Jury may convict of lesser offense, or of attempt.....	260
1160. Verdict as to some defendants, and another trial as to others...	260
1161. In what cases Court may direct a reconsideration of the verdict	260
1162. When judgment may be given on informal verdict.....	260
1163. Polling the jury.....	261
1164. Recording the verdict.....	261

CONTENTS.

xliii

SECTION 1165. Defendant, when to be discharged or detained after acquittal ...	261
1166. Proceedings upon general verdict of conviction or a special verdict	261

CHAPTER V.

BILLS OF EXCEPTION.

SECTION 1170. In what cases.....	262
1171. When to be settled and signed.....	262
1172. Exceptions not taken on the trial, but which may be taken by both parties.....	262
1173. Exceptions not taken on the trial, but which may be taken by the defendant.....	263
1174. Exceptions mentioned in two preceding sections, how and when settled.....	263
1175. What bill of exceptions is to contain.....	263
1176. Written charges need not be excepted to.....	263

CHAPTER VI.

NEW TRIALS.

SECTION 1179. New trial defined.....	264
1180. Its effect	264
1181. In what cases it may be granted.....	264
1182. Application for, when made.....	265

CHAPTER VII.

ARREST OF JUDGMENT.

SECTION 1185. Motion in arrest of judgment defined. Upon what defects founded, and when made.....	265
1186. Court may arrest judgment without motion.....	265
1187. Effect of arresting judgment.....	266
1188. Defendant, when to be held or discharged	266

TITLE VIII.

OF JUDGMENT AND EXECUTION.

CHAPTER I. The judgment.....	266
II. The execution	271

CHAPTER I.

THE JUDGMENT.

SECTION 1191. Appointing time for judgment.....	267
1192. Upon plea of guilty, Court must determine degree.....	267
1193. Presence of defendant.....	267
1194. When defendant in custody, how brought before the Court for judgment.....	267
1195. How brought before the Court when on bail.....	268
1196. Bench warrant to issue.....	268
1197. Form of bench warrant.....	268
1198. Warrant, how served.....	268
1199. Arrest of defendant.....	268
1200. Arraignment of defendant for judgment.....	269
1201. What cause may be shown against the judgment.....	269
1202. If no cause shown, judgment to be pronounced.....	269
1203. Court may summarily inquire into circumstances in aggravation or mitigation of punishment.....	269
1204. Proof of former conviction, or of facts, etc., in mitigation, etc., how made.....	270
1205. Duration of imprisonment on judgment to pay a fine.....	270
1206. Judgment to pay a fine constitutes a lien.....	270
1207. Entry of judgment and judgment roll.....	270

CHAPTER II.

THE EXECUTION.

SECTION 1213. Authority for the execution of a judgment, other than of death	271
1214. If for fine alone, execution to issue as in civil cases.....	272
1215. Judgment of fine and imprisonment, by whom and how executed.....	272
1216. Duty of Sheriff on receiving copy of judgment of imprisonment	272
1217. Warrant of execution upon judgment of death. Time of execution.....	272
1218. Judge to transmit statement of conviction and testimony to Governor.....	272
1219. Governor may require opinion of Justices of Supreme Court, etc., thereon.....	273
1220. Judgment of death, when suspended.....	273
1221. If reason to suppose defendant insane, jury to inquire into it; how and by whom ordered.....	273
1222. Duty of District Attorney upon inquisition.....	273
1223. Inquisition, how certified and filed.....	273
1224. Proceedings upon finding of jury.....	273
1225. Proceedings when female is supposed to be pregnant.....	274
1226. Proceedings upon the finding of the jury.....	274

CONTENTS.

xlv

SECTION 1227. Proceedings when judgment of death remaining in force has not been executed	274
1228. Punishment of death, how inflicted.....	275
1229. Execution, where to take place and who to be present	275
1230. Return upon death warrant.....	275

TITLE IX.

OF APPEALS TO THE SUPREME COURT.

CHAPTER I. Appeals, when allowed and how taken, and the effect thereof....	276
II. Dismissing an appeal for irregularity.....	278
III. Argument of the appeal.. ..	279
IV. Judgment upon appeal.....	279

CHAPTER I.

APPEALS, WHEN ALLOWED AND HOW TAKEN, AND THE EFFECT THEREOF.

SECTION 1235. Who may appeal. Appeal to be taken on questions of law alone.....	276
1236. Parties, how designated on appeal.....	276
1237. In what cases an appeal may be taken by the defendant	276
1238. In what cases by the people.....	276
1239. Appeals, within what time to be taken.....	277
1240. Appeal, how taken	277
1241. When notice may be served by publication.....	277
1242. Effect of an appeal by the people.....	277
1243. Effect of an appeal by the defendant	277
1244. Same	277
1245. Same	278
1246. Duty of Clerks upon appeal.....	278

CHAPTER II.

DISMISSING AN APPEAL FOR IRREGULARITY.

SECTION 1248. For what irregularity, and how dismissed.....	278
1249. Dismissal for want of a return.....	278

CHAPTER III.

ARGUMENT OF THE APPEAL.

SECTION 1252. Appeals, when to be heard and determined.....	279
1253. Judgment may be affirmed, but cannot be reversed without argument.....	279

SECTION 1254. Number of counsel to be heard	279
1255. Defendant need not be present	279

CHAPTER IV.

JUDGMENT UPON APPEAL.

SECTION 1258. Court to give judgment without regard to technical errors.....	280
1259. What may be reviewed on an appeal by defendant from a judgment.....	280
1260. May reverse, affirm, or modify the judgment, and order new trial	280
1261. New trial, where to be had.....	280
1262. Defendant, when to be discharged on reversal of judgment.....	280
1263. Judgment to be executed on affirmance.....	280
1264. Judgment of appellate Court, how entered and remitted.....	280
1265. Jurisdiction of appellate Court ceases after judgment remitted	281

TITLE X.

MISCELLANEOUS PROCEEDINGS.

CHAPTER I. Bail	282
II. Who may be witnesses in criminal actions.....	292
III. Compelling the attendance of witnesses	293
IV. Examination of witnesses conditionally	296
V. Examination of witnesses on commission.....	298
VI. Inquiry into the insanity of the defendant before trial or after conviction	303
VII. Compromising certain public offenses by leave of the Court.....	305
VIII. Dismissal of the action, before or after indictment, for want of prosecution or otherwise.....	306
IX. Proceedings against corporations.....	308
X. Entitling affidavits.....	309
XI. Errors and mistakes in pleadings and other proceedings.....	310
XII. Disposal of property stolen or embezzled.....	310
XIII. Reprieves, commutations, and pardons.....	312

CHAPTER I.

BAIL.

ARTICLE I. In what cases the defendant may be admitted to bail.....	282
II. Bail upon being held to answer before indictment.....	284
III. Bail upon an indictment before conviction.....	285
IV. Bail on appeal.....	287

CONTENTS.

xlvii

ARTICLE V. Deposit instead of bail.....	287
VI. Surrender of the defendant.....	288
VII. Forfeiture of the undertaking of bail or of the deposit of money	289
VIII. Recommitment of the defendant after having given bail or de- posited money instead of bail.....	290

ARTICLE I.

IN WHAT CASES THE DEFENDANT MAY BE ADMITTED TO BAIL.

SECTION 1268. Admission to bail defined.....	282
1269. Taking of bail defined.....	282
1270. Offense not bailable.....	283
1271. In what cases defendant may be admitted to bail before con- viction.....	283
1272. In what cases he may be admitted to bail after conviction and upon appeal	283
1273. Nature of bail.....	283
1274. When bail is matter of discretion, notice of application must be given to District Attorney.....	284

ARTICLE II.

BAIL UPON BEING HELD TO ANSWER BEFORE INDICTMENT.

SECTION 1277. What magistrates may admit to bail.....	284
1278. Bail, how put in and form of the undertaking.....	284
1279. Qualifications of bail.....	285
1280. Bail, how to justify.....	285
1281. On allowance of bail, defendant to be discharged.....	285

ARTICLE III.

BAIL UPON AN INDICTMENT BEFORE CONVICTION.

SECTION 1284. When offense is not capital.....	286
1285. When the offense is capital	286
1286. Bail on habeas corpus.....	286
1287. Form of undertaking.....	286
1288. Sections applicable to qualifications, etc	287

ARTICLE IV.

BAIL ON APPEAL.

SECTION 1291. Who may admit to bail.....	287
1292. Qualifications of bail and how put in, and condition of under- taking.....	287

ARTICLE V.

DEPOSIT INSTEAD OF BAIL.

SECTION 1295. Deposit, when and how made.....	287
1296. May, after bail is given and before forfeiture.....	288
1297. Deposit to be applied to payment of judgment and fine.....	288

ARTICLE VI.

SURRENDER OF THE DEFENDANT.

SECTION 1300. Surrender, by whom; when, and how made	288
1301. By whom, etc., the defendant may be arrested for the purpose of a surrender.....	289
1302. On a surrender, before forfeiture, money deposited to be re- funded, etc.....	289

ARTICLE VII.

FORFEITURE OF THE UNDERTAKING OF BAIL OR OF THE DEPOSIT OF MONEY.

SECTION 1305. In what cases, and how ordered. When and how forfeiture may be discharged.....	289
1306. Forfeiture to be enforced by action.....	290
1307. Deposit, when forfeited, how disposed of.....	290

ARTICLE VIII.

RECOMMITMENT OF THE DEFENDANT AFTER HAVING GIVEN BAIL OR DEPOSITED
MONEY INSTEAD OF BAIL.

SECTION 1310. In what cases	290
1311. Contents of order.....	291
1312. Defendant may be arrested in any county.....	291
1313. If for failure to appear for judgment, defendant must be com- mitted.....	291
1314. If for other cause, he may be admitted to bail.....	291
1315. Bail in such case, by whom taken.....	292
1316. Form of the undertaking.....	292
1317. Bail must possess what qualifications, and how put in.....	292

CHAPTER II.

WHO MAY BE WITNESSES IN CRIMINAL ACTIONS.

SECTION 1321. Who are competent witnesses.....	293
1322. When husband and wife are not competent witnesses.....	293
1323. When the defendant is not a competent witness.....	293

CHAPTER III.

COMPELLING THE ATTENDANCE OF WITNESSES.

SECTION 1326. Subpœna defined, and who may issue.....	293
1327. Form of subpœna.....	294
1328. Subpœna, by whom and how served.....	294
1329. Payment of the expenses of the witness when he is from with- out the county or is poor.....	295
1330. Witness residing or served with subpœna out of the county, how compelled to attend.....	295
1331. Disobedience to subpœna, etc.....	295
1332. Failure to appear, undertaking forfeited.....	296

CHAPTER IV.

EXAMINATION OF WITNESSES CONDITIONALLY.

SECTION 1335. Witnesses to be examined conditionally for the defendant, as provided in this Chapter.....	296
1336. In what cases defendant may apply for the order.....	296
1337. Application, how made.....	296
1338. Application, to whom made.....	297
1339. Order, when granted and what to contain.....	297
1340. On proof of service, if District Attorney be absent, examina- tion must proceed.....	297
1341. If facts on which order was founded be disapproved, examina- tion not to proceed.....	297
1342. Attendance of witness, how enforced.....	298
1343. Testimony, how taken and authenticated.....	298
1344. Deposition to be transmitted to Clerk.....	298
1345. When may be read in evidence. Subject to objections, etc.....	298

CHAPTER V.

EXAMINATION OF WITNESSES ON COMMISSION.

SECTION 1349. Witness residing out of the State, when to be examined.....	299
1350. When defendant may apply for an order to examine, etc.....	299
1351. Commission defined.....	299
1352. Application made on affidavit.....	299
1353. Application, to whom made.....	299
1354. Order for commission, when granted, and stay of proceedings..	300
1355. Interrogations, how settled and allowed.....	300
1356. Direction as to the return of the commission.....	300

SECTION 1357. Commission, how executed. Copy of this section to be annexed to commission.....	300
1358. Commission, how returned, when delivered to an agent for that purpose.....	301
1359. Same.....	302
1360. When and how filed.....	302
1361. Commission and return to be open for inspection. Copies, etc.	302
1362. Depositions to be read in evidence. Objections thereto, etc.....	302

CHAPTER VI.

INQUIRY INTO THE INSANITY OF THE DEFENDANT BEFORE TRIAL OR AFTER CONVICTION.

SECTION 1367. An insane person cannot be tried, sentenced, or punished for a public offense.....	303
1368. When doubts arise as to sanity of the defendant, how determined. Stay of proceedings on.....	303
1369. Order of the trial of the question of insanity. Charge of the Court.....	303
1370. Verdict of the jury and proceedings thereon.....	304
1371. If defendant is committed, it exonerates his bail, etc.....	304
1372. Defendant detained in asylum until he becomes sane. Notice then given to District Attorney, etc.....	304
1373. Expense of sending, etc., defendant to asylum, where chargeable.....	305

CHAPTER VII.

COMPROMISING CERTAIN PUBLIC OFFENSES BY LEAVE OF THE COURT.

SECTION 1377. Certain offenses for which the party injured has a civil action may be compromised.....	305
1378. Compromise to be by permission of the Court. Order thereon to bar another prosecution.....	305
1379. No public offense to be compromised except as herein provided.....	306

CHAPTER VIII.

DISMISSAL OF THE ACTION BEFORE OR AFTER INDICTMENT, FOR WANT OF PROSECUTION OR OTHERWISE.

SECTION 1382. When action may be dismissed.....	306
1383. Court may order action to be continued and discharge defendant from custody, when and how.....	307
1384. If action dismissed, defendant to be discharged, etc.....	307

CONTENTS.

li

SECTION 1385. Court may, of own motion or on application of District Attorney, order action dismissed.....	307
1386. Nolle prosequi abolished.....	307
1387. Dismissal a bar in misdemeanor, but not in felony.....	307

CHAPTER IX.

PROCEEDINGS AGAINST CORPORATIONS.

SECTION 1390. Summons upon information, etc., against; by whom issued and when returnable.....	308
1391. Form of summons.....	308
1392. When and how served.....	308
1393. Examination of the charge	309
1394. Certificate of the magistrate, and return thereof with the depositions.....	309
1395. If the magistrate certify that there is sufficient cause, Grand Jury to investigate, etc.....	309
1396. Appearance and plea.....	309
1397. Fine on conviction, how collected.....	309

CHAPTER X.

ENTITLING AFFIDAVITS.

SECTION 1401. Affidavits defectively entitled, valid.....	309
--	-----

CHAPTER XI.

ERRORS AND MISTAKES IN PLEADINGS AND OTHER PROCEEDINGS.

SECTION 1404. When not material.....	310
---	-----

CHAPTER XII.

DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

SECTION 1407. When it comes into the custody of the peace officer he must hold it subject to the order of the magistrate.....	310
1408. Order for its delivery to owner.....	311
1409. When it comes into the custody of the magistrate he must deliver it to owner.....	311
1410. Court in which trial is had may order its delivery	311
1411. If not claimed in six months to be delivered to County Treasurer	311
1412. Receipt by officers for money, etc., taken from a person arrested for a public offense.....	311
1413. Duties of persons having charge of police offices in incorporated cities or towns.....	312

CHAPTER XIII.

REPRIEVES, COMMUTATIONS, AND PARDONS.

SECTION 1417. Power of the Governor to grant reprieves, commutations, and pardons.....	312
1418. His power in respect to convictions for treason. Duty of the Legislature in such cases.....	312
1419. Governor to communicate to the Legislature reprieves, commutations, and pardons.....	313
1420. Report of case, how and from whom required.....	313
1421. Notice to District Attorney of application for pardon.....	313
1422. Publication of notice	313
1423. When two preceding sections are not applicable.....	313

TITLE XI.

OF PROCEEDINGS IN JUSTICES' AND POLICE COURTS AND APPEALS TO THE COUNTY COURT.

CHAPTER I. Proceedings in Justices' and Police Courts.....	314
II. Appeals to County Courts.....	321

CHAPTER I.

PROCEEDINGS IN JUSTICES' AND POLICE COURTS.

SECTION 1426. Proceedings must be commenced by complaint.....	315
1427. When warrant of arrest must issue. Form of warrant.....	315
1428. Minutes, how kept.....	315
1429. The plea, and how put in.....	316
1430. Issue, how tried.....	316
1431. Change of venue, when granted	316
1432. Upon change of venue, papers, etc., must be transmitted. Proceedings on change of venue.....	316
1433. Postponement of the trial.....	316
1434. Defendant to be present.....	317
1435. Jury trial, when to be demanded. Formation of the jury.....	317
1436. Challenges.....	317
1437. Oath of jurors.....	317
1438. Trial, how conducted.....	317
1439. Court to decide questions of law, but not to charge in respect to matters of fact.....	317
1440. Jury may decide in Court, or retire. Oath of officer on their retirement	317
1441. Verdict of jury, how delivered and entered.....	318

CONTENTS.

liii

SECTION 1442.	Verdict, when several defendants are tried together.....	318
1443.	Jury, when to be discharged without a verdict.....	318
1444.	If discharged, defendant may be tried again.....	318
1445.	Proceedings on plea of guilty or on conviction.....	318
1446.	Judgment of fine may direct imprisonment.....	318
1447.	Defendant, on acquittal, to be discharged. Order that prosecutor pay costs.....	318
1448.	Judgment against prosecutor for costs.....	319
1449.	Judgment, when to be rendered.....	319
1450.	When defendant may move for a new trial or in arrest of judgment	319
1451.	New trial, grounds of.....	319
1452.	Grounds of motion in arrest of judgment.....	320
1453.	Judgment to be entered in the minutes.....	320
1454.	If judgment of acquittal or imposing a fine only, defendant to be discharged.....	320
1455.	Judgment of imprisonment, how executed	320
1456.	Judgment that defendant be imprisoned until he pay a fine, how executed.....	320
1457.	Fines, disposition of.....	321
1458.	Defendant may be admitted to bail.....	321
1459.	Subpoenas.....	321
1460.	Entitling affidavits	321
1461.	"Police Courts" defined.....	321

CHAPTER II.

APPEALS TO COUNTY COURTS.

SECTION 1466.	Appeals, when allowed	322
1467.	Appeals, how taken, heard, and determined.....	322
1468.	Statement on appeal.....	322
1469.	If new trial granted, in what Court had.....	322
1470.	Proceedings, if appeal is dismissed or judgment affirmed.....	322

TITLE XII.

OF SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

CHAPTER I.	Of the writ of habeas corpus.....	323
II.	Of Coroners' inquests and duties of Coroners.....	332
III.	Of search warrants.....	335
IV.	Proceedings against fugitives from justice.....	340
V.	Miscellaneous provisions respecting special proceedings of a criminal nature.....	343

CHAPTER I.

OF THE WRIT OF HABEAS CORPUS.

SECTION 1473. Who may prosecute writ.....	324
1474. Application for, how made.....	324
1475. By whom issued, and before whom returnable.....	324
1476. Writ must be granted without delay.....	325
1477. Writ, what to contain.....	325
1478. How served.....	325
1479. Proceedings upon disobedience to the writ.....	326
1480. Return, what to contain.....	326
1481. Body must be produced, when.....	326
1482. When hearing may proceed without production of the body.....	327
1483. Hearing on return.....	327
1484. Proceedings on the hearing.....	327
1485. When Court may discharge the party.....	328
1486. When to remand party.....	328
1487. Grounds of discharge in certain cases.....	328
1488. Not to be discharged for defect of form in warrant.....	329
1489. Court may examine witnesses, and discharge, hold to bail, or recommit.....	329
1490. Writ for purposes of bail.....	329
1491. Judge may take bail.....	329
1492. Judge, when to remand.....	330
1493. Person in illegal, may be committed to legal, custody.....	330
1494. Disposition of party, pending proceedings on return.....	330
1495. Defect of form in the writ immaterial, when.....	330
1496. Imprisonment after discharge, in what cases permitted.....	330
1497. Warrant may issue instead of writ, in certain cases.....	331
1498. Warrant may include person charged with illegal detention.....	331
1499. Warrant, how executed.....	331
1500. Return and hearing on	331
1501. Party may be discharged or remanded.....	331
1502. Writ and process may issue and be served at any time.....	332
1503. By whom issued and when returnable.....	332
1504. Where returnable.....	332
1505. Damages, by whom recovered, for failure to issue or obey the writ	332

CHAPTER II.

OF CORONERS' INQUESTS AND DUTIES OF CORONERS.

SECTION 1510. Coroner to summon jury to inquire into cause of death in certain cases.....	333
1511. Jurors to be sworn.....	333
1512. Witnesses to be summoned.....	333

CONTENTS.

lv

SECTION 1513.	Witnesses compelled to attend.....	333
1514.	Verdict of jury in writing. What to contain.....	333
1515.	Testimony in writing, and where filed	334
1516.	Exception.....	334
1517.	Coroner to issue warrant, when.....	334
1518.	Form of warrant.....	334
1519.	How served.....	335

CHAPTER III.

OF SEARCH WARRANTS.

SECTION 1523.	Search warrant defined.....	336
1524.	Upon what grounds it may issue.....	336
1525.	It cannot be issued but upon probable cause, etc.....	336
1526.	Magistrates must examine, on oath, complainant, etc.....	336
1527.	Depositions, what to contain.....	337
1528.	When to issue warrant.....	337
1529.	Form of warrant.....	337
1530.	By whom served.....	337
1531.	Officer may break open door, etc., to execute warrant.....	338
1532.	May break open door, etc., to liberate person acting in his aid..	338
1533.	When warrant may be served in the night.....	338
1534.	Within what time warrant must be executed.....	338
1535.	Officer to give receipt for property taken.....	338
1536.	Property, how disposed of.....	338
1537.	Return of warrant and delivery of inventory of property taken	339
1538.	Copy of inventory, to whom delivered.....	339
1539.	Proceedings, if grounds of warrant are controverted.....	339
1540.	Property, when to be restored to person from whom it was taken.....	339
1541.	Depositions, warrant, etc., to be returned by magistrate to County Court.....	339
1542.	When magistrate may direct defendant to be searched in his presence.....	340

CHAPTER IV.

PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

SECTION 1547.	Rewards for the apprehension of fugitives from justice.....	340
1548.	Fugitives from another State, when to be delivered up.....	341
1549.	Magistrate to issue warrant.....	341
1550.	Proceedings for the arrest and commitment of the person charged.....	341
1551.	When and for what time to be committed.....	341
1552.	His admission to bail.....	341
1553.	Magistrate must notify District Attorney of the arrest.....	342

SECTION 1554. Duty of the District Attorney.....	342
1555. Person arrested, when to be discharged.....	342
1556. Magistrate to return his proceedings to the next County Court. Proceedings thereon.....	342
1557. Fugitives from this State. Accounts of persons employed in procuring surrender to be paid out of the State Treasury.....	342
1558. No fee or reward to be paid to or received by any public officer procuring the surrender of fugitives, etc.....	343

CHAPTER V.

MISCELLANEOUS PROVISIONS RESPECTING SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

SECTION 1562. Parties to special proceedings, how designated.....	343
1563. Entitling affidavits	343
1564. Subpoenas.....	343

TITLE XIII.

PROCEEDINGS FOR BRINGING PERSONS IMPRISONED IN THE STATE PRISON, OR THE JAIL OF ANOTHER COUNTY, BEFORE A COURT.

SECTION 1567. Persons imprisoned in the State Prison or the jail of another county, how brought before a Court.....	344
--	------------

TITLE XIV.

DISPOSITION OF FINES AND FORFEITURES.

SECTION 1570. Fines and forfeitures, how disposed of.....	344
--	------------

PART III.

OF THE STATE PRISON AND COUNTY JAILS.

TITLE I.

OF THE STATE PRISON AND THE DISCHARGE OF PRISONERS THEREFROM BEFORE THEIR TERM OF SERVICE EXPIRES.

CHAPTER I. Of the State Prison.....	347
II. Of the discharge of prisoners before the expiration of their term of service.....	350

CHAPTER I.

OF THE STATE PRISON.

SECTION 1573. Under the charge and control of a Board of Directors.....	348
1574. President pro tem of Senate, when to act as Director, etc.....	348
1575. Compensation of Directors.....	348
1576. Board must adopt rules and regulations.	348
1577. Board may appoint Warden and other officers.....	348
1578. Duties of Clerk and other officers.....	348
1579. Monthly reports of officers.....	348
1580. Board must keep account of the funds received, etc., and report to the Governor.....	349
1581. Persons convicted of offenses against the United States to be re- ceived in the prison.....	349
1582. Disposition of insane prisoners.....	349
1583. State Prison Fund.....	350
1584. State Prison Fund, how disbursed.....	350
1585. Board cannot contract debts	350
1586. Compensation of Sheriffs for transportation of convicts.....	350

CHAPTER II.

OF THE DISCHARGE OF PRISONERS BEFORE THE EXPIRATION OF THEIR TERM OF SERVICE.

SECTION 1590. Credits for good behavior, how and when allowed.....	351
1591. Credits, when forfeited.....	351
1592. Board to make rules and regulations to carry the provisions of this Chapter into effect.....	351

Λ*—PENAL.

SECTION 1593. Board, when to report credits to Governor.....	352
1594. Further powers of the Board	352
1595. Board must report to the Legislature prisoners whom they think should be pardoned. Governor may pardon if Legis- lature recommend.....	352

TITLE II.

OF COUNTY JAILS.

SECTION 1597. County Jails, by whom kept and for what used.....	353
1598. Rooms required in County Jails.....	354
1599. Prisoners to be classified.....	354
1600. Prisoners committed must be actually confined.....	354
1601. Sheriff to receive prisoners committed by United States Courts..	354
1602. Sheriff or Jailer answerable for safe keeping of such prisoners	355
1603. When jail of a contiguous county may be used.....	355
1604. Keeper of jail in contiguous county to receive prisoners.....	355
1605. When jail in contiguous county to cease to be used.....	355
1606. Prisoners to be returned to proper county.....	356
1607. Prisoners may be removed in case of fire.....	356
1608. Prisoners may be removed in case of pestilence.....	356
1609. Papers served on Jailer for prisoner.....	356
1610. Guard for jail	356
1611. Sheriff to receive all persons duly committed.....	357
1612. Prisoners on civil process, when not to be received.....	357
1613. Prisoners may be required to labor.....	357
1614. Rules and regulations for the performance of labor.....	357

PART V.—POLITICAL CODE.

OF THE DEFINITION AND SOURCES OF LAW, EFFECT AND PUBLICATION OF THE CODES, AND THE EXPRESS REPEAL OF STATUTES.

TITLE I. Definition and sources of the law.....	358
II. Effect of the Codes	359
III. Publication of the Codes and statutes continued in force	360
IV. Express repeal of statutes	360

TITLE I.

DEFINITION AND SOURCES OF THE LAW.

SECTION 4466. Definition of law.....	358
4467. How expressed.....	358
4468. Common law, when rule of decision.....	358

TITLE II.

EFFECT OF THE CODES.

SECTION 4478. Construction of the Codes with relation to the laws passed at the present session.....	359
4479. Laws passed at present session prevail.....	359
4480. Construction of Codes with relation to each other.....	359
4481. Conflicts between Titles, which to prevail.....	359
4482. Conflicts between Chapters, which to prevail.....	359
4483. Conflicts between Articles, which to prevail	360
4484. Conflicting sections of the same Title, which to prevail.....	360

TITLE III.

PUBLICATION OF THE CODES.

SECTION 4494. Codes not published as part of the statutes.....	360
---	-----

TITLE IV.

EXPRESS REPEAL OF STATUTES.

SECTION 4504. Repeal of repealed statutes not to imply that they were in force	360
4505. Express repeal of statutes to be provided for.....	361



THE
PENAL CODE
OF
CALIFORNIA.

IN THREE PARTS.

THE
PENAL CODE
OF
CALIFORNIA.

IN THREE PARTS.

THE
PENAL CODE
OF
CALIFORNIA.

AN ACT
TO
ESTABLISH A PENAL CODE.

[Approved February 14th, 1872.]

*The People of the State of California, represented in
Senate and Assembly, do enact as follows:*

TITLE OF THE ACT.

1. This Act shall be known as THE PENAL CODE OF CALIFORNIA, and is divided into Three Parts, as follows: Title and Divisions of this Act.

- I.—OF CRIMES AND PUNISHMENTS.
- II.—OF CRIMINAL PROCEDURE.
- III.—OF THE STATE PRISON AND COUNTY JAILS.

THE PENAL CODE

OF

CALIFORNIA.

PRELIMINARY PROVISIONS.

SECTION 2. When this Act takes effect.

3. Not retroactive.
4. Construction of the Penal Code.
5. Provisions similar to existing laws, how construed.
6. Effect of Code upon past offenses.
7. Certain terms defined in the senses in which they are used in this Code.
8. What intent to defraud is sufficient.
9. Civil remedies preserved.
10. Proceedings to impeach or remove officers and others preserved.
11. Authority of Courts-martial preserved. Courts of justice to punish for contempts.
12. Of sections declaring crimes punishable. Duty of Court.
13. Punishments, how determined.
14. 'Witness' testimony may be read against him on prosecution for perjury.
15. "Crime" and "public offense" defined.
16. Crimes, how divided.
17. Felony and misdemeanor defined.
18. Punishment of felony, when not otherwise prescribed.
19. Punishment of misdemeanor, when not otherwise prescribed.
20. To constitute crime there must be unity of act and intent.
21. Intent, how manifested, and who considered of sound mind.
22. Drunkenness no excuse for crime. When it may be considered.

SECTION 23. Certain statutes specified as continuing in force.

24. This Act, how cited.

When this
Act takes
effect.

2. This Code takes effect at twelve o'clock, noon, on the first day of January, eighteen hundred and seventy-three.

Not
retroactive.

3. No part of it is retroactive, unless expressly so declared.

Construc-
tion of the
Penal Code

4. The rule of the common law, that penal statutes are to be strictly construed, has no application to this Code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice.

Provisions
similar to
existing
laws, how
construed.

5. The provisions of this Code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

Effect of
Code upon
past
offenses.

6. No act or omission, commenced after twelve o'clock noon of the day on which this Code takes effect as a law, is criminal or punishable, except as prescribed or authorized by this Code, or by some of the statutes which it specifies as continuing in force and as not affected by its provisions, or by some ordinance, municipal, county, or township regulation, passed or adopted, under such statutes and in force when this Code takes effect. Any act or omission commenced prior to that time may be inquired of, prosecuted, and punished in the same manner as if this Code had not been passed.

Certain
terms
defined in
the senses
in which
they are
used in this
Code.

7. Whenever the terms mentioned in this section are employed in the Penal Code, they are employed in the senses hereafter affixed to them, except where a different sense plainly appears—

1. The term "willfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the

omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage. Same.

2. The terms "neglect," "negligence," "negligent" and "negligently," import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

3. The term "corruptly" imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

4. The terms "malice" and "maliciously" import a wish to vex, annoy, or injure another person; established either by proof or presumption of law.

5. The term "knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of this Code. It does not require any knowledge of the unlawfulness of such act or omission.

6. The term "bribe" signifies any money, goods, right in action, property, thing of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his action, vote, or opinion, in any public or official capacity.

7. The word "vessel," when used with reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats, and every structure adapted to be navigated from place to place.

8. The term "peace officer" signifies any one of the officers mentioned in section eight hundred and seventeen of this Code.

9. The term "magistrate" signifies any one of the officers mentioned in section eight hundred and eight of this Code.

Same.

10. The term "signature" includes any name, mark, or sign written with intent to authenticate any instrument or writing.

11. The term "writing" includes both printing and writing.

12. The term "land" and the phrases "real estate" and "real property," include lands, tenements, and hereditaments, and all rights thereto and interest therein.

13. The term "personal property" includes every description of money, goods, chattels, effects, evidences of rights in action, and all written instruments by which any pecuniary obligation, right, or title to property is created, acknowledged, transferred, increased, defeated, discharged, or diminished, and every right or interest therein.

14. The word "property" includes personal and real property.

15. The word "month" means a calendar month, unless otherwise expressed, and the word "year," and also the abbreviation "A. D." is equivalent to the expression "year of our Lord."

16. The word "oath" includes "affirmation" in all cases where an affirmation may be substituted for an oath; and in like cases the word "swear" includes the word "affirm." Every mode of oral statement under oath or affirmation is embraced in the term "testify," and every written one, in the term "depose."

17. When the seal of a Court or public officer, or officer, is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone, as well as upon wax or a wafer affixed thereto.

18. The word "State," when applied to the different parts of the United States, includes the District of Columbia and the Territories, and the words "United States" may include the District and Territories.

19. Where the term "person" is used in this Code Same. to designate the party whose property may be the subject of any offense, it includes this State, any other State, government, or country which may lawfully own any property within this State, and all public and private corporations or joint associations, as well as individuals.

20. The word "person" includes bodies politic and corporate.

21. The singular number includes the plural, and the plural the singular.

22. Words used in the masculine gender comprehend, as well, the feminine and neuter.

23. Words used in the present tense include the future, but exclude the past.

24. The word "will" includes codicils.

25. Words and phrases must be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, must be construed according to such peculiar and appropriate meaning.

26. Words giving a joint authority to three or more public officers or other persons, are construed as giving such authority to a majority of them, unless it be otherwise expressed in the act giving the authority.

8. Whenever, by any of the provisions of this Code, an intent to defraud is required in order to constitute any offense, it is sufficient if an intent appears to defraud any person, association, or body politic or corporate, whatever. What intent to defraud is sufficient.

9. The omission to specify or affirm in this Code any liability to damages, penalty, forfeiture, or other remedy imposed by law and allowed to be recovered Civil remedies preserved.

or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same.

Proceedings to impeach or remove officers and others preserved.

10. The omission to specify or affirm in this Code any ground of forfeiture of a public office, or other trust or special authority conferred by law, or any power conferred by law to impeach, remove, depose, or suspend any public officer or other person holding any trust, appointment, or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition, or suspension.

Authority of Courts-martial preserved.

11. This Code does not affect any power conferred by law upon any Court Martial, or other military authority or officer, to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal, or officer, to impose or inflict punishment for a contempt.

Courts of justice to punish for contempts.

Of sections declaring crimes punishable
Duty of Court.

12. The several sections of this Code which declare certain crimes to be punishable as therein mentioned, devolve a duty upon the Court authorized to pass sentence, to determine and impose the punishment prescribed.

Punishments, how determined

13. Whenever in this Code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case must be determined by the Court authorized to pass sentence, within such limits as may be prescribed by this Code.

Witness' testimony may be read against him on prosecution for perjury.

14. The various sections of this Code which declare that evidence obtained upon the examination of a person as a witness cannot be received against him in any criminal proceeding, do not forbid such evidence being proved against such person upon any proceed-

ings founded upon a charge of perjury committed in such examination.

15. A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments: "Crime" and "public offense" defined.

1. Death;
2. Imprisonment;
3. Fine;
4. Removal from office; or,
5. Disqualification to hold and enjoy any office of honor, trust, or profit in this State.

16. Crimes are divided into:

Crimes,
how
divided.

1. Felonies; and,
2. Misdemeanors.

17. A felony is a crime which is, or may be, punishable with death, or by imprisonment in the State Prison. Every other crime is a misdemeanor. Felony and misdemeanor defined.

18. Except in cases where a different punishment is prescribed by this Code, every offense declared to be a felony is punishable by imprisonment in the State Prison, not exceeding five years. Punishment of felony, when not otherwise prescribed.

19. (§ 143.) Except in cases where a different punishment is prescribed by this Code, every offense declared to be a misdemeanor is punishable by imprisonment in a County Jail not exceeding six months, or by a fine not exceeding five hundred dollars, or by both. Punishment of misdemeanor, when not otherwise prescribed.

20. (§ 1.) In every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence. To constitute crime there must be unity of act and intent.

21. (§§ 2, 3.) The intent or intention is manifested by the circumstances connected with the offense, and the sound mind and discretion of the accused. All Intent, how manifested, and who considered of sound mind.

persons are of sound mind who are neither idiots nor lunatics, nor affected with insanity.

**Drunken-
ness no
excuse for
crime.
When it
may be
considered.**

22. (§ 8.) No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive, or intent with which he committed the act.

**Certain
statutes
specified as
continuing
in force.**

23. Nothing in this Code affects any of the provisions of the following statutes, but such statutes are recognized as continuing in force, notwithstanding the provisions of the Codes, except so far as they have been repealed or affected by subsequent laws:

1. All Acts incorporating or chartering municipal corporations, and Acts amending or supplementing such Acts.

2. All Acts consolidating cities and counties, and Acts amending or supplementing such Acts.

3. All Acts for funding the State debt, or any part thereof, and for issuing State bonds, and Acts amending or supplementing such Acts.

4. All Acts regulating and in relation to rhodeos.

5. All Acts in relation to Judges of the Plains.

6. All Acts creating or regulating Boards of Water Commissioners and Overseers in the several townships or counties of the State.

7. All Acts in relation to a branch State Prison.

8. An Act for the more effectual prevention of cruelty to animals, approved March thirtieth, eighteen hundred and sixty-eight.

9. An Act for the suppression of Chinese houses of

ill-fame, approved March thirty-first, eighteen hundred and sixty-six. Same.

10. An Act relating to the Home of the Inebriate of San Francisco, and to prescribe the powers and duties of the Board of Managers and the officers thereof, approved April first, eighteen hundred and seventy.

11. An Act concerning marks and brands in the County of Siskiyou, approved March twentieth, eighteen hundred and sixty-six.

12. An Act to prevent the destruction of fish in the waters of Bolinas Bay, in Marin County, approved March thirty-first, eighteen hundred and sixty-six.

13. An Act concerning trout in Siskiyou County, approved April second, eighteen hundred and sixty-six.

14. An Act to prevent the destruction of fish in Napa River and Sonoma Creek, approved January twenty-ninth, eighteen hundred and sixty-eight.

15. An Act to prevent the destruction of fish and game in, upon, and around the waters of Lake Merritt or Peralta, in the County of Alameda, approved March eighteenth, eighteen hundred and seventy.

16. An Act to regulate salmon fisheries in Eel River, in Humboldt County, approved April eighteenth, eighteen hundred and fifty-nine.

17. An Act for the better protection of stock raisers in the Counties of Fresno, Tulare, Monterey, and Mariposa, approved March twentieth, eighteen hundred and sixty-six.

18. An Act concerning oysters, approved April twenty-eighth, eighteen hundred and fifty-one.

19. An Act concerning oyster beds, approved April second, eighteen hundred and sixty-six.

20. An Act concerning gas companies, approved April fourth, eighteen hundred and seventy.

This Act,
how cited.

24. This Act, whenever cited, enumerated, referred to, or amended, may be designated simply as THE PENAL CODE, adding, when necessary, the number of the section.

PART I.

OF CRIMES AND PUNISHMENTS.

PART I.

OF CRIMES AND PUNISHMENTS.

TITLE I.

OF PERSONS LIABLE TO PUNISHMENT FOR CRIME.

SECTION 26. Who are capable of committing crimes.

27. Who are liable to punishment.

26. (§§ 4, 5, 7, 9, 10). All persons are capable of committing crimes, except those belonging to the following classes: Who are capable of committing crimes.

1. Children under the age of fourteen years, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness;

2. Idiots;

3. Lunatics and insane persons;

4. Persons who committed the act or made the omission charged, under an ignorance or mistake of fact which disproves any criminal intent;

5. Persons who committed the act charged, without being conscious thereof;

6. Persons who committed the act or made the omission charged, through misfortune or by accident, when it appears that there was no evil design, intention, or culpable negligence;

TITLE IV.

OF CRIMES AGAINST THE ELECTIVE FRANCHISE.

SECTION 41. Violation of election laws by certain officers a felony.

42. Fraudulent registration a felony.

43. Refusal to be sworn by or to answer questions of Board of Judges of Election a misdemeanor.

44. Refusal to obey summons of Board of Registration a misdemeanor.

45. Voting without being qualified, voting twice, and other election frauds, felonies.

46. Attempting to vote without being qualified.

47. Procuring illegal voting a misdemeanor.

48. Changing ballots or altering returns by election officers, felonies.

49. Inspectors unfolding or marking tickets guilty of a misdemeanor.

50. Forging or altering returns a felony.

51. Adding to or subtracting from votes given a felony.

52. Persons aiding and abetting or concealing guilty of felony.

53. Intimidating, corrupting, deceiving, or defrauding electors, a misdemeanor.

54. Furnishing money for elections except for specified purposes.

55. Unlawful offers to procure offices for electors.

56. Communicating such offer.

57. Bribing or offering to bribe members of legislative caucuses, etc.

58. Preventing public meetings.

59. Disturbance of public meetings, misdemeanor.

60. Betting on elections.

61. Violation of election laws by persons not officers.

Violation
of election
laws by
certain
officers a
felony.

41. Every person charged with the performance of any duty, under the provisions of any law of this State relating to elections, who willfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, is, unless a different punishment for such acts or omissions is prescribed by this Code, punishable by fine not exceeding one thousand dollars, or by imprison-

ment in the State Prison not exceeding five years, or by both.

42. Every person who willfully causes, procures, or allows himself to be registered in the Great Register of any county, knowing himself not to be entitled to such registration, is punishable by fine not exceeding one thousand dollars, or by imprisonment in the County Jail or State Prison not exceeding one year, or by both. In all cases where, on the trial of a person charged with any offense under the provisions of this section, it appears in evidence that the accused stands registered in the Great Register of any county, without being qualified for such registration, the Court must order such registration to be canceled.

Fraudulent registration a felony.

43. Every person who, after being required by the Board of Judges at any election, refuses to be sworn, or who, after being sworn, refuses to answer any pertinent question propounded by such Board touching his right, or the right of any other person to vote, is guilty of a misdemeanor.

Refusal to be sworn by or to answer questions of Board of Judges of Election a misdemeanor.

44. Every person summoned to appear and testify before any Board of Registration, who willfully disobeys such summons, is guilty of a misdemeanor.

Refusal to obey summons of Board of Registration a misdemeanor.

45. Every person not entitled to vote, who fraudulently votes, and every person who votes more than once at any one election, or knowingly hands in two or more tickets folded together, or changes any ballot after the same has been deposited in the ballot box, or adds, or attempts to add, any ballot to those legally polled at any election, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted; or adds to or mixes with, or attempts to add to or mix with, the ballots lawfully polled, other ballots, while the same are being counted or canvassed, or at any other time, with intent

Voting without being qualified, voting twice, and other election frauds, felonies.

to change the result of such election; or carries away or destroys, or attempts to carry away or destroy, any poll list, or ballots, or ballot box, for the purpose of breaking up or invalidating such election, or willfully detains, mutilates, or destroys any election returns, or in any manner so interferes with the officers holding such election or conducting such canvass, or with the voters lawfully exercising their rights of voting at such election, as to prevent such election or canvass from being fairly held and lawfully conducted, is guilty of felony.

Attempting
to vote
without
being
qualified.

46. Every person not entitled to vote, who fraudulently attempts to vote, or who, being entitled to vote, attempts to vote more than once at any election, is guilty of a misdemeanor.

Procuring
illegal
voting a
misdemeanor.

47. Every person who procures, aids, assists, counsels, or advises another to give or offer his vote at any election, knowing that the person is not qualified to vote, is guilty of a misdemeanor.

Changing
ballots or
altering
returns by
election
officers,
felonies.

48. Every officer or clerk of election who aids in changing or destroying any poll list, or in placing any ballots in the ballot box, or taking any therefrom, or adds, or attempts to add, any ballots to those legally polled at such election, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix with the ballots polled any other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election, or allows another to do so, when in his power to prevent it, or carries away or destroys, or knowingly allows another to carry away or destroy any poll list, ballot box, or ballots lawfully polled, is punishable by imprisonment in the State Prison for not less than two nor more than seven years.

49. Every Inspector, Judge, or Clerk of an election, who, previous to putting the ballot of an elector in the ballot box, attempts to find out any name on such ballot, or who opens or suffers the folded ballot of any elector which has been handed in to be opened or examined previous to putting the same into the ballot box, or who makes or places any mark or device on any folded ballot with the view to ascertain the name of any person for whom the elector has voted, or who, without the consent of the elector, discloses the name of any person which such Inspector, Judge, or Clerk has fraudulently or illegally discovered to have been voted for by such elector, is punishable by fine, not less than fifty nor more than five hundred dollars.

Inspectors
unfolding
or marking
tickets
guilty of a
misdemeanor.

50. Every person who forges or counterfeits returns of an election purporting to have been held at a precinct, town, or ward where no election was in fact held, or willfully substitutes forged or counterfeit returns of election in the place of the true returns, for a precinct, town, or ward where an election was actually held, is punishable by imprisonment in the State Prison for a term not less than two nor more than ten years.

Forging or
altering
returns a
felony.

51. Every person who willfully adds to or subtracts from the votes actually cast at an election, in any returns, or who alters such returns, is punishable by imprisonment in the State Prison for not less than one nor more than five years.

Adding to
or subtract-
ing from
votes given
a felony.

52. Every person who aids or abets in the commission of any of the offenses mentioned in the four preceding sections, or who, being present at or cognizant of the commission of either of such offenses, does not give information thereof as soon as practicable to the District Attorney or Grand Jury of the proper county, or to some Justice of the Peace of such county, is punishable by imprisonment in the County

Persons
aiding and
abetting or
concealing
guilty of
felony.

Jail for the period of six months, or in the State Prison not exceeding two years.

Intimidating,
corrupting,
deceiving,
or
defrauding
electors, a
misdemeanor.

53. Every person who, by force, threats, menaces, bribery, or any corrupt means, either directly or indirectly, attempts to influence any elector in giving his vote, or to deter him from giving the same, or attempts by any means whatever to awe, restrain, hinder, or disturb any elector in the free exercise of the right of suffrage, or furnishes any elector wishing to vote, who cannot read, with a ticket, informing or giving such elector to understand that it contains a name written or printed thereon different from the name which is written or printed thereon, or defrauds any elector at any such election, by deceiving and causing such elector to vote for a different person for any office than he intended or desired to vote for; or who, being Inspector, Judge, or Clerk of any election, while acting as such, induces, or attempts to induce, any elector, either by menace or reward, or promise thereof, to vote differently from what such elector intended or desired to vote, is guilty of a misdemeanor.

Furnishing
money for
elections
except for
specific
purposes.

54. Every person who, with intent to promote the election of himself or any other person, either—

1. Furnishes entertainment at his expense to any meeting of electors previous to or during an election;

2. Pays for, procures, or engages to pay for any such entertainment;

3. Furnishes or engages to pay or deliver any money or property for the purpose of procuring the attendance of voters at the polls, or for the purpose of compensating any person for procuring attendance of voters at the polls, except for the conveyance of voters who are sick or infirm;

4. Furnishes or engages to pay or deliver any money or property for any purpose intended to promote the election of any candidate, except for the expenses of

holding and conducting public meetings for the discussion of public questions and of printing and circulating ballots, handbills, and other papers previous to such election;

—Is guilty of a misdemeanor.

55. Every person who, being a candidate at any election, offers or agrees to appoint or procure the appointment of any particular person to office, as an inducement or consideration to any person to vote for, or procure or aid in procuring the election of such candidate, is guilty of a misdemeanor.

Unlawful
offers to
procure
offices for
electors.

56. Every person, not being a candidate, who communicates any offer, made in violation of the last section, to any person, with intent to induce him to vote for or to procure or aid in procuring the election of the candidate making the offer, is guilty of a misdemeanor.

Communi-
cating
such offer.

57. (§§ 84, 85, 86.) Every person who gives or offers a bribe to any officer or member of any legislative caucus, political convention, committee, primary election, or political gathering of any kind, held for the purpose of nominating candidates for offices of honor, trust, or profit, in this State, with intent to influence the person to whom such bribe is given or offered to be more favorable to one candidate than another, and every person, member of either of the bodies in this section mentioned, who receives or offers to receive any such bribe, is punishable by imprisonment in the State Prison not less than one nor more than fourteen years.

Bribing or
offering to
bribe
members of
legislative
caucuses,
etc.

58. Every person who, by threats, intimidations, or unlawful violence, willfully hinders or prevents electors from assembling in public meeting for the

Preventing
public
meetings.

consideration of public questions, is guilty of a misdemeanor.

Disturb-
ance of
public
meetings,
misdemeanor.

59. Every person who willfully disturbs or breaks up any public meeting of electors or others, lawfully being held for the purpose of considering public questions, is guilty of a misdemeanor.

Betting on
elections.

60. Every person who makes, offers, or accepts any bet or wager upon the result of any election, or upon the success or failure of any person or candidate, or upon the number of votes to be cast, either in the aggregate or for any particular candidate, or upon the vote to be cast by any person, is guilty of a misdemeanor.

Violation
of election
laws by
persons not
officers.

61. Every person who willfully violates any of the provisions of the laws of this State relating to elections is, unless a different punishment for such violation is prescribed by this Code, punishable by fine not exceeding one thousand dollars, or by imprisonment in the State Prison not exceeding five years, or by both.

TITLE V.

OF CRIMES BY AND AGAINST THE EXECUTIVE POWER OF THE STATE.

SECTION 65. Acting in a public capacity without having qualified.

66. Acts of officers de facto not affected.

67. Giving or offering bribes to executive officers.

68. Asking or receiving bribes.

69. Resisting officers.

70. Extortion.

71. Violation of laws prohibiting certain officers from dealing in scrip, etc., and from being interested in contracts.

72. Fraudulently presenting bills or claims to public officers for allowance or payment.

73. Buying appointments to office.

SECTION 74. Taking rewards for deputation.

75. Exercising functions of office wrongfully.

76. Refusal to surrender books, etc., to successor.

77. Preceding sections to apply to administrative and ministerial officers.

65. Every person who exercises any of the functions of a public office without having taken and filed the oath of office, or without having executed and filed the required bond, is guilty of a misdemeanor, and forfeits his right to the office.

Acting in a public capacity without having qualified.

66. The last section shall not be construed to affect the validity of acts done by a person exercising the functions of a public office in fact, where other persons than himself are interested in maintaining the validity of such acts.

Acts of Officers do facto not affected.

67. Every person who gives or offers any bribe to any executive officer of this State, with intent to influence him in respect to any act, decision, vote, opinion, or other proceeding as such officer, is punishable by imprisonment in the State Prison not less than one nor more than fourteen years, and is disqualified from holding any office in this State.

Giving or offering bribes to executive officers.

68. Every executive officer, or person elected or appointed to an executive office, who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his vote, opinion, or action upon any matter then pending, or which may be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in the State Prison not less than one nor more than fourteen years; and, in addition thereto, forfeits his office, and is forever disqualified from holding any office in this State.

Asking or receiving bribes.

69. Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such

Resisting officers.

officer by law, or who knowingly resists, by the use of force or violence, such officer, in the performance of his duty, is punishable by fine not exceeding five thousand dollars, and imprisonment in the County Jail not exceeding five years.

Extortion. 70. Every executive officer who asks or receives any emolument, gratuity, or reward, or any promise thereof, excepting such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

Violation of laws prohibiting certain officers from dealing in scrip, etc., and from being interested in contracts 71. Every officer or person prohibited by the laws of this State from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, who violates any of the provisions of such laws, is punishable by a fine of not more than one thousand dollars, or by imprisonment in the State Prison not more than five years, and is forever disqualified from holding any office in this State.

Fraudulently presenting bills or claims to public officers for allowance or payment 72. Every person who, with intent to defraud, presents for allowance or for payment to any State Board or officer, or to any county, town, city, ward, or village Board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is guilty of felony.

Buying appointments to office. 73. Every person who gives or offers any gratuity or reward, in consideration that he or any other person shall be appointed to any public office, or shall be permitted to exercise or discharge the duties thereof, is guilty of a misdemeanor.

Taking rewards for deputation. 74. Every public officer who, for any gratuity or reward, appoints another person to a public office, or permits another person to exercise or discharge any of the duties of his office, is punishable by a fine not ex-

ceeding five thousand dollars, and, in addition thereto, forfeits his office and is forever disqualified from holding any office in this State.

75. Every person who willfully and knowingly intrudes himself into any public office to which he has not been elected or appointed, and every person who, having been an executive officer, willfully exercises any of the functions of his office after his term has expired, and a successor has been elected or appointed and has qualified, is guilty of a misdemeanor.

Exercising
functions of
office
wrongfully.

76. Every officer whose office is abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he has resigned or been legally removed from office, willfully and unlawfully withholds or detains from his successor, or other person entitled thereto, the records, papers, documents, or other writing appertaining or belonging to his office, or mutilates, destroys, or takes away the same, is punishable by imprisonment in the State Prison not less than one nor more than ten years.

Refusal to
surrender
books, etc.,
to
successor.

77. The various provisions of this Chapter apply to administrative and ministerial officers, in the same manner as if they were mentioned therein.

Preceding
sections to
apply to
adminis-
trative and
ministerial
officers.

TITLE VI.

OF CRIMES AGAINST THE LEGISLATIVE POWER.

SECTION 81. Preventing the meeting or organization of either branch of the Legislature.

82. Disturbing the Legislature while in session.

83. Altering draft of bill or resolution.

84. Altering enrolled copy of bill or resolution.

85. Giving or offering bribes to members of the Legislature.

86. Receiving bribes by members of the Legislature.

SECTION 87. Witnesses refusing to attend, testify, or produce papers before the Legislature or committees thereof.

88. Members of the Legislature, in addition to other penalties, to forfeit office and be disqualified, etc.

Preventing
the meeting
or organiza-
tion of
either
branch of
the
Legislature

81. Every person who willfully, and by force or fraud, prevents the Legislature of this State, or either of the Houses composing it, or any of the members thereof, from meeting or organizing, is guilty of felony.

Disturbing
the Legisla-
ture while
in session.

82. Every person who willfully disturbs the Legislature of this State, or either of the Houses composing it, while in session, or who commits any disorderly conduct in the immediate view and presence of either House, tending to interrupt its proceedings or impair the respect due to its authority, is guilty of a misdemeanor.

Altering
draft of
bill or
resolution.

83. Every person who fraudulently alters the draft of any bill or resolution which has been presented to either of the Houses composing the Legislature, to be passed or adopted, with intent to procure it to be passed or adopted by either House, or certified by the presiding officer of either House, in language different from that intended by such House, is guilty of felony.

Altering
enrolled
copy of bill
or
resolution.

84. Every person who fraudulently alters the enrolled copy of any bill or resolution which has been passed or adopted by the Legislature of this State, with intent to procure it to be approved by the Governor, or certified by the Secretary of State, or printed or published by the printer of the statutes, in language different from that in which it was passed or adopted by the Legislature, is guilty of felony.

Giving or
offering
bribes to
members of
the Legis-
lature.

85. (§§ 84, 85, 86.) Every person who gives or offers to give a bribe to any member of the Legislature, or to another person for him, or attempts by menace, deceit, suppression of truth, or any corrupt means, to influence a member in giving or withhold-

ing his vote, or in not attending the House or any committee of which he is a member, is punishable by imprisonment in the State Prison not less than one nor more than ten years.

86. (§§ 84, 85, 86.) Every member of either of the Houses composing the Legislature of this State who asks, receives, or agrees to receive any bribe, upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby, or shall be given, in any particular manner, or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or gives, or offers, or promises to give, any official vote in consideration that another member of the Legislature shall give any such vote either upon the same or another question, is punishable by imprisonment in the State Prison not less than one nor more than fourteen years.

Receiving
bribes by
members
of the
Legislature

87. Every person who, being summoned to attend as witness before either House of the Legislature or any committee thereof, refuses or neglects, without lawful excuse, to attend pursuant to such summons; and every person who, being present before either House of the Legislature or any committee thereof, willfully refuses to be sworn or to answer any material and proper question, or to produce, upon reasonable notice, any material and proper books, papers, or documents in his possession or under his control, is guilty of a misdemeanor.

Witnesses
refusing to
attend,
testify, or
produce
papers
before the
Legislature
or
committees
thereof.

88. Every member of the Legislature convicted of any crime defined in this Chapter, in addition to the punishment prescribed, forfeits his office and is forever disqualified from holding any office in this State.

Members
of the Leg-
islature, in
addition to
other
penalties,
to forfeit
office and
be disquali-
fied, etc.

TITLE VII.

OF CRIMES AGAINST PUBLIC JUSTICE.

CHAPTER I. *Bribery and Corruption.*II. *Rescues.*III. *Escapes and Aiding Therein.*IV. *Forging, Stealing, Mutilating, and Falsifying Judicial and Public Records and Documents.*V. *Perjury and Subornation of Perjury.*VI. *Falsifying Evidence.*VII. *Other Offenses Against Public Justice.*VIII. *Conspiracy.*

CHAPTER I.

BRIBERY AND CORRUPTION.

SECTION 92. Giving bribes to Judges, jurors, referees, etc.

93. Receiving bribes by judicial officers, jurors, etc.

94. Extortion.

95. Improper attempts to influence jurors, referees, etc.

96. Misconduct of jurors, referees, etc.

97. Justice or Constable purchasing judgment.

98. Officers to forfeit and be disqualified from holding office.

Giving
bribes to
Judges,
jurors,
referees,
etc.

92. (§§ 84, 85, 86, 106.) Every person who gives or offers to give a bribe to any judicial officer, juror, referee, arbitrator, or umpire, or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion, or decision upon any matter or question which is or may be brought before him for decision, is punishable by imprisonment in the State Prison not less than one nor more than ten years.

93. (§§ 84, 85, 86, 106.) Every judicial officer, juror, referee, arbitrator, or umpire, and every person

authorized by law to hear or determine any question or controversy, who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his vote, opinion, or decision upon any matters or question which is or may be brought before him for decision, shall be influenced thereby, is punishable by imprisonment in the State Prison not less than one nor more than ten years.

Receiving
bribes by
judicial
officers,
jurors, etc.

94. (§§ 84, 85.) Every judicial officer who asks or receives any emolument, gratuity, or reward, or any promise thereof, except such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

Extortion.

95. Every person who corruptly attempts to influence a juror, or any person summoned or drawn as a juror, or chosen as an arbitrator or umpire, or appointed a referee, in respect to his verdict in, or decision of, any cause pending, or about to be brought before him, either:

Improper
attempts
influence
jurors,
referees,
etc.

1. By means of any communication, oral or written, had with him, except in the regular course of proceedings upon the trial of the cause; or,

2. By means of any book, paper, or instrument exhibited, otherwise than in the regular course of proceedings upon the trial of the cause; or,

3. By means of any threat, intimidation, persuasion, or entreaty; or,

4. By means of any assurance or promise of any pecuniary or other advantage;

—Is punishable by fine not exceeding five thousand dollars, or by imprisonment in the State Prison not exceeding five years.

96. Every juror, or person drawn or summoned as a juror, or chosen arbitrator or umpire, or appointed referee, who either:

Misconduct
of jurors,
referees,
etc.

1. Makes any promise or agreement to give a verdict or decision for or against any party; or,

2. Willfully and corruptly permits any communication to be made to him, or receives any book, paper, instrument, or information relating to any cause pending before him, except according to the regular course of proceedings upon the trial of such cause;

—Is punishable by fine not exceeding five thousand dollars, or by imprisonment in the State Prison not exceeding five years.

Justice or
Constable
purchasing
judgment.

97. Every Justice of the Peace or Constable of the same township who purchases or is interested in the purchase of any judgment or part thereof on the docket of, or on any docket in possession of such Justice, is guilty of a misdemeanor.

Officers to
forfeit and
be disqualified
from
holding
office.

98. Every officer convicted of any crime defined in this Chapter, in addition to the punishment prescribed, forfeits his office and is forever disqualified from holding any office in this State.

CHAPTER II.

RESCUES.

SECTION 101. Rescuing prisoners.

102. Retaking goods from custody of officer.

Rescuing
prisoners.

101. (§§ 93, 94.) Every person who rescues or attempts to rescue, or aids another person in rescuing or attempting to rescue, any prisoner from any prison, or from any officer or person having him in lawful custody, is punishable as follows:

1. If such prisoner was in custody upon a conviction of felony punishable with death: by imprisonment in the State Prison not less than one nor more than fourteen years;

2. If such prisoner was in custody upon a conviction of any other felony: by imprisonment in the State Prison not less than six months nor more than five years; Same.

3. If such prisoner was in custody upon a charge of felony: by a fine not exceeding one thousand dollars and imprisonment in the County Jail not exceeding two years;

4. If such prisoner was in custody otherwise than upon a charge or conviction of felony: by fine not exceeding five hundred dollars and imprisonment in the County Jail not exceeding six months.

102. Every person who willfully injures or destroys, or takes or attempts to take, or assists any person in taking or attempting to take, from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of a misdemeanor. Retaking goods from custody of officer.

CHAPTER III.

ESCAPES AND AIDING THEREIN.

SECTION 105. Escapes from State Prison.

106. Attempt to escape from State Prison.

107. Escapes from other than State Prison.

108. Officers suffering convicts to escape.

109. Assisting prisoner to escape.

110. Carrying into prison things useful to aid in an escape.

105. Every prisoner confined in the State Prison for a term less than for life, who escapes therefrom, is punishable by imprisonment in the State Prison for a term equal in length to the term he was serving at the time of such escape. Escapes from State Prison.

106. Every prisoner confined in the State Prison for a term less than for life, who attempts to escape from such prison, is guilty of felony. Attempt to escape from State Prison.

Escapes
from other
than State
Prison.

107. Every prisoner confined in any other prison than the State Prison, who escapes or attempts to escape therefrom, is guilty of a misdemeanor.

Officers
suffering
convicts to
escape.

108. (§ 99.) Every keeper of a prison, Sheriff, Deputy Sheriff, Constable, or Jailer, or person employed as a guard, who fraudulently contrives, procures, aids, connives at, or voluntarily permits the escape of any prisoner in custody, is punishable by imprisonment in the State Prison not exceeding ten years, and fine not exceeding ten thousand dollars.

Assisting
prisoners
to escape.

109. (§ 98.) Every person who willfully assists any prisoner confined in any prison or in the lawful custody of any officer or person to escape, or in an attempt to escape from such prison or custody, is punishable as provided in Section 108 of this Code.

Carrying
into prison
things use-
ful to aid in
an escape.

110. (§ 96.) Every person who carries or sends into a prison anything useful to aid a prisoner in making his escape, with intent thereby to facilitate the escape of any prisoner confined therein, is punishable as provided in Section 108 of this Code.

CHAPTER IV.

FORGING, STEALING, MUTILATING, AND FALSIFYING JUDICIAL AND PUBLIC RECORDS AND DOCUMENTS.

SECTION 113. Larceny, destruction, etc., of records by officers having them in custody.

114. Larceny, destruction, etc., of records by other persons.

115. Offering false or forged instruments to be filed of record.

116. Adding names, etc., to jury lists.

117. Falsifying jury lists, etc.

Larceny,
destruction,
etc., of records
by officers,
having
them in
custody.

113. (§ 87.) Every officer having the custody of any record, map, or book, or of any paper or proceeding of any Court, filed or deposited in any public office, or placed in his hands for any purpose, who is

guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying, removing or secreting the whole or any part of such record, map, book, paper, or proceeding, or who permits any other person so to do, is punishable by imprisonment in the State Prison not less than one nor more than fourteen years.

114. (§ 87.) Every person not an officer such as is referred to in the preceding section, who is guilty of any of the acts specified in that section, is punishable by imprisonment in the State Prison not exceeding five years, or in a County Jail not exceeding one year, or by a fine not exceeding one hundred dollars, or by both.

Larceny,
destruction,
etc.,
of records
by other
persons.

115. Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this State, which instrument, if genuine, might be filed, or registered, or recorded under any law of this State or of the United States, is guilty of felony.

Offering
false or
forged
instru-
ments to
be filed of
record.

116. Every person who adds any names to the list of persons selected by a Board of Supervisors to serve as jurors, either by placing the same in the jury box or otherwise, or extracts any name therefrom, or destroys the jury box or any of the pieces of paper containing the names of jurors, or mutilates or defaces such names so that the same cannot be read, or changes such names on the pieces of paper, except in cases allowed by law, is guilty of a felony.

Adding
names,
etc., to
jury lists.

117. Every officer or person required by law to certify to the list of persons selected as jurors who maliciously, corruptly, or willfully certifies to a false or incorrect list, or a list containing other names than those selected, or who, being required by law to write down the names placed on the certified lists on separate pieces of paper, does not write down and place in the

Falsifying
jury lists,
etc.,

jury box the same names that are on the certified list, and no more and no less than are on such list, is guilty of a felony.

CHAPTER V.

PERJURY AND SUBORNATION OF PERJURY.

SECTION 118. Perjury defined.

119. Oath defined.

120. Oath of office.

121. Irregularity in administering.

122. Incompetency of witness no defense.

123. Witness' knowledge of materiality of his testimony not necessary.

124. Making depositions, etc., when deemed complete.

125. Statement of that which one does not know to be true.

126. Punishment of perjury.

127. Subornation of perjury.

128. Procuring the execution of innocent person.

Perjury
defined.

118. (§ 82.) Every person who, having taken an oath that he will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which such an oath may by law be administered, willfully and contrary to such oath, states as true any material matter which he knows to be false, is guilty of perjury.

Oath
defined.

119. The term "oath," as used in the last section, includes an affirmation, and every other mode authorized by law of attesting the truth of that which is stated.

Oath of
office.

120. So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by the two preceding sections.

Irregular-
ity in
administer-
ing.

121. It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner.

122. It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition, or certificate of which falsehood is alleged. It is sufficient that he did give such testimony or make such deposition or certificate.

Incompetency of witness no defense.

123. It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding.

Witnesses' knowledge of materiality of his testimony not necessary.

124. The making of a deposition or certificate is deemed to be complete, within the provisions of this Chapter, from the time when it is delivered by the accused to any other person, with the intent that it be uttered or published as true.

Making depositions, etc., when deemed complete.

125. An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.

Statement of that which one does not know to be true.

126. (§ 82.) Perjury is punishable by imprisonment in the State Prison not less than one nor more than fourteen years.

Punishment of perjury.

127. (§ 82.) Every person who willfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured.

Subornation of perjury.

128. (§ 83.) Every person who, by willful perjury or subornation of perjury, procures the conviction and execution of any innocent person, is punishable by death.

Procuring the execution of innocent person.

CHAPTER VI.

FALSIFYING EVIDENCE.

SECTION 132. Offering false evidence.

133. Deceiving a witness.

134. Preparing false evidence.

135. Destroying evidence.

136. Preventing or dissuading witness from attending.

137. Bribing witnesses.

138. Taking or offering to take bribes.

Offering
false
evidence.

132. Every person who upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or ante-dated, is guilty of felony.

Deceiving
a witness.

133. Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any witness or person about to be called as a witness upon any trial, proceeding, inquiry, or investigation whatever, authorized by law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

Preparing
false
evidence.

134. Every person guilty of preparing any false or ante-dated book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of felony.

Destroying
evidence.

135. Every person who, knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, inquiry, or investigation whatever, authorized by law, willfully destroys or conceals the same,

with intent thereby to prevent it from being produced, is guilty of a misdemeanor.

136. Every person who willfully prevents or dissuades any person who is or may become a witness, from attending upon any trial, proceeding, or inquiry, authorized by law, is guilty of a misdemeanor.

Preventing
or
dissuading
witness
from
attending.

137. Every person who gives or offers, or promises to give, to any witness, or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any witness to give false or to withhold true testimony, is guilty of a misdemeanor.

Bribing
witnesses.

138. Every person who is a witness, or is about to be called as such, who receives or offers to receive any bribe, upon any understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial or proceeding upon which his testimony is required, is guilty of a misdemeanor.

Taking or
offering to
take
bribes.

CHAPTER VII.

OTHER OFFENSES AGAINST PUBLIC JUSTICE.

SECTION 142. Officer refusing to receive or arrest parties charged with crime.

143. Public Administrator, neglect of duty or violation of duty by.

144. Receiving fee or compensation for services rendered in arresting fugitives from justice.

145. Delaying to take person arrested before a magistrate.

146. Making arrests, etc., without lawful authority.

147. Inhumanity to prisoners.

148. Resisting public officers in the discharge of their duties.

149. Assaults, etc., by officers, under color of authority.

150. Refusing to aid officers in arrest, etc.

151. Taking extra-judicial oaths.

SECTION 152. Administering extra-judicial oaths.

- 153. Compounding crimes.
- 154. Debtor fraudulently concealing his property.
- 155. Defendant fraudulently concealing his property.
- 156. Fraudulent pretenses relative to birth of infant.
- 157. Substituting one child for another.
- 158. Common barratry defined. How punished.
- 159. What proof is required.
- 160. Misconduct by attorneys.
- 161. Buying demands or suit by an attorney.
- 162. Attorneys forbidden to defend prosecutions carried on by their partners or formerly by themselves.
- 163. Limitation of preceding section.
- 164. Grand Juror acting after challenge has been allowed.
- 165. Bribing members of Common Councils, Boards of Supervisors, or Trustees.
- 166. Criminal contempts.
- 167. False certificates by public officers.
- 168. Disclosing fact of indictment or presentment having been found or made.
- 169. Grand Juror disclosing what transpired before the Grand Jury.
- 170. Maliciously procuring search warrant.
- 171. Unauthorized communication with convict in the State Prison.
- 172. Keeping liquor within two miles of State Prison.
- 173. Importing foreign convicts.
- 174. Bringing Chinese into the State.
- 175. Separate and distinct prosecutions.
- 176. Omission of duty by public officer.
- 177. Commission of prohibited acts, when no penalty is prescribed.

Officer
refusing to
receive or
arrest
parties
charged
with
crime.

142. (§ 100.) Every Sheriff, Coroner, keeper of a jail, Constable, or other peace officer, who willfully refuses to receive or arrest any person charged with a criminal offense, is punishable by fine not exceeding five thousand dollars, and imprisonment in the County Jail not exceeding five years.

Public
Adminis-
trator,
neglect of
duty or
violation of
duty by.

143. Every person holding the office of Public Administrator, who willfully refuses or neglects to perform the duties thereof, or who violates any provision of law relating to his duties or the duties of his office, for which some other punishment is not prescribed, is punishable by fine not exceeding five thou-

sand dollars, or imprisonment in the County Jail not exceeding two years, or both.

144. Every person who violates any of the provisions of Section 1558 is guilty of a misdemeanor.

Receiving
fee or com-
pensation
for
services
rendered in
arresting
fugitives
from
justice.

145. Every public officer or other person, having arrested any person upon a criminal charge, who willfully delays to take such person before a magistrate having jurisdiction, to take his examination, is guilty of a misdemeanor.

Delaying
to take
person
arrested
before a
magistrate.

146. Every public officer, or person pretending to be a public officer, who, under the pretense or color of any process or other legal authority, arrests any person or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements, without a regular process or other lawful authority therefor, is guilty of a misdemeanor.

Making
arrests,
etc.,
without
lawful
authority.

147. (§ 88.) Every officer who is guilty of willful inhumanity or oppression toward any prisoner under his care or in his custody, is punishable by fine not exceeding two thousand dollars, and by removal from office.

Inhuman-
ity to
prisoners.

148. (§ 92.) Every person who willfully resists, delays, or obstructs any public officer, in the discharge or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by fine not exceeding five thousand dollars, and imprisonment in the County Jail not exceeding five years.

Resisting
public
officers
in the
discharge
of their
duties.

149. (§ 92.) Every public officer who, under color of authority, without lawful necessity, assaults or beats any person, is punishable by fine not exceeding five thousand dollars, and imprisonment in the County Jail not exceeding five years.

Assaults,
etc., by
officers,
under
color of
authority.

Refusing
to aid
officers in
arrest, etc.

150. (§ 128.) Every male person above eighteen years of age who neglects or refuses to join the posse comitatus or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person against whom there may be issued any process, or by neglecting to aid and assist in retaking any person who, after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offense, being thereto lawfully required by any Sheriff, Deputy Sheriff, Coroner, Constable, Judge, or Justice of the Peace, or other officer concerned in the administration of justice, is punishable by fine of not less than fifty nor more than one thousand dollars.

Taking
extra-
judicial
oaths.

151. Every person who takes an oath before an officer or person authorized by law to administer oaths, except when such oath is required or authorized by law, or is required by the provisions of some contract as the basis of or in proof of a claim, or when the same has been agreed to be received by some person as proof of any fact in the performance of any contract, obligation, or duty, instead of other evidence, is guilty of a misdemeanor.

Adminis-
tering
extra-
judicial
oaths.

152. Every officer who administers an oath to another person, or who makes and delivers any certificate that another person has taken an oath, except when such oath is required or authorized by law, or is required by the provisions of some contract as a basis of or in proof of a claim, or when the same has been agreed to be received by some person as a proof of any fact in the performance of any contract, obligation, or duty, instead of other evidence, is guilty of a misdemeanor.

153. (§ 101.) Every person who, having knowledge of the actual commission of a crime, takes money or property of another, or any gratuity or reward, or any engagement, or promise thereof, upon any agreement or understanding to compound or conceal such crime, or to abstain from any prosecution thereof, or to withhold any evidence thereof, except in the cases provided for by law, in which crimes may be compromised by leave of Court, is punishable as follows:

Compound-
ing crimes.

1. By imprisonment in the State Prison not exceeding five years, or in a County Jail not exceeding one year, where the crime was punishable by death or imprisonment in the State Prison for life;

2. By imprisonment in the State Prison not exceeding three years, or in the County Jail not exceeding six months, where the crime was punishable by imprisonment in the State Prison for any other term than for life;

3. By imprisonment in the County Jail not exceeding six months, or by fine not exceeding five hundred dollars, where the crime was a misdemeanor.

154. (§ 134.) Every debtor who fraudulently removes his property or effects out of this State, or fraudulently sells, conveys, assigns, or conceals his property, with intent to defraud, hinder, or delay his creditors of their rights, claims, or demands, is punishable by imprisonment in the County Jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both.

Debtor
fraudulently
concealing his
property.

155. (§ 135.) Every person against whom an action is pending, or against whom a judgment has been rendered for the recovery of any personal property, who fraudulently conceals, sells, or disposes of such property, with intent to hinder, delay, or defraud the person bringing such action or recovering such judgment, or with such intent removes such property be-

Defendant
fraudulently
concealing his
property.

yond the limits of the county in which it may be at the time of the commencement of such action or the rendering of such judgment; is punishable as provided in the preceding section.

Fraudulent
pretenses
relative to
birth of
infant.

156. Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit any real estate or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate, or the distribution of any ~~such~~ personal estate from any person lawfully entitled thereto, is punishable by imprisonment in the State Prison not exceeding ten years.

Substitu-
ting one
child for
another.

157. Every person to whom an infant has been confided for nursing, education, or any other purpose, who, with intent to deceive any parent or guardian of such child, substitutes or produces to such parent or guardian another child in the place of the one so confided, is punishable by imprisonment in the State Prison not exceeding seven years.

Common
barratry
defined.

How
punished.

158. Common barratry is the practice of exciting groundless judicial proceedings, and is punishable by imprisonment in the County Jail not exceeding six months and by fine not exceeding five hundred dollars.

What proof
is required.

159. No person can be convicted of common barratry except upon proof that he has excited suits or proceedings at law in at least three instances, and with a corrupt or malicious intent to vex and annoy.

Misconduct
by
attorneys.

160. Every attorney who, whether as attorney or as counselor, either:

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the Court or any party; or,

2. Willfully delays his client's suit with a view to his own gain; or,

3. Willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for;

—Is guilty of a misdemeanor.

161. Every attorney who, either directly or indirectly, buys or is interested in buying any evidence of debt or thing in action, with intent to bring suit thereon, is guilty of a misdemeanor.

Buying
demands
or suit
by an
attorney.

162. Every attorney who directly or indirectly advises in relation to, or aids, or promotes the defense of any action or proceeding in any Court, the prosecution of which is carried on, aided, or promoted by any person as District Attorney or other public prosecutor, with whom such person is directly or indirectly connected as a partner; or who, having himself prosecuted or in any manner aided or promoted any action or proceeding in any Court as District Attorney or other public prosecutor, afterwards, directly or indirectly, advises in relation to or takes any part in the defense thereof, as attorney or otherwise, or who takes or receives any valuable consideration from or on behalf of any defendant in any such action, upon any understanding or agreement whatever having relation to the defense thereof, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor, forfeits his license to practice law.

Attorneys
forbidden
to defend
prosecu-
tions
carried on
by their
partners or
formerly
by
themselves

163. The preceding section does not prohibit an attorney from defending himself in person, as attorney or counsel, when prosecuted, either civilly or criminally.

Limitation
of
preceding
section.

164. Every Grand Juror who, with knowledge that a challenge interposed against him by a defendant has been allowed, is present at or takes part or attempts

Grand
juror
acting
after
challenge
has been
allowed.

to take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the Grand Jury thereon, is guilty of a misdemeanor.

Bribing
members of
Common
Councils,
Boards of
Supervi-
sors, or
Trustees.

165. (§§ 84, 85.) Every person who gives or offers a bribe to any member of any Common Council, Board of Supervisors, or Board of Trustees of any county, city, or corporation, with intent to corruptly influence such member in his action on any matter or subject pending before the body of which he is a member, and every member of either of the bodies mentioned in this section who receives or offers to receive any such bribe, is punishable by imprisonment in the State Prison for a term not less than one nor more than fourteen years, and is disqualified from holding any office in this State.

Criminal
contempts.

166. Every person guilty of any contempt of Court, of either of the following kinds, is guilty of a misdemeanor:

1. Disorderly, contemptuous, or insolent behavior committed during the sitting of any Court of justice, in immediate view and presence of the Court, and directly tending to interrupt its proceedings or to impair the respect due to its authority;

2. Behavior of the like character committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any Court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law;

3. Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any Court;

4. Willful disobedience of any process or order lawfully issued by any Court;

5. Resistance willfully offered by any person to the lawful order or process of any Court;

6. The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question;

7. The publication of a false or grossly inaccurate report of the proceedings of any Court;

8. Presenting to any Court having power to pass sentence upon any prisoner under conviction, or to any member of such Court, any affidavit or testimony or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon such prisoner, except as provided in this Code.

167. Every public officer authorized by law to make or give any certificate or other writing, who makes and delivers as true any such certificate or writing, containing statements which he knows to be false, is guilty of a misdemeanor.

False
certificates
by public
officers.

168. Every Grand Juror, District Attorney, Clerk, Judge, or other officer, who, except by issuing or in executing a warrant of arrest, willfully discloses the fact of a presentment or indictment having been made for a felony, until the defendant has been arrested, is guilty of a misdemeanor.

Disclosing
fact of
indictment
or present-
ment
having
been found
or made.

169. Every Grand Juror who, except when required by a Court, willfully discloses any evidence adduced before the Grand Jury, or anything which he himself or any other member of the Grand Jury may have said, or in what manner he or any other Grand Juror may have voted on a matter before them, is guilty of a misdemeanor.

Grand
juror
disclosing
what
transpired
before the
grand jury.

170. Every person who maliciously and without probable cause procures a search warrant or warrant of arrest to be issued and executed, is guilty of a misdemeanor.

Mali-
ciously
procuring
search
warrant.

5. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws;

—They are punishable by imprisonment in the County Jail not exceeding one year, or by fine not exceeding one thousand dollars.

No other
conspiracies
punishable
criminally.

183. (§ 103.) No conspiracies, other than those enumerated in the preceding section, are punishable criminally.

Overt act,
when
necessary.

184. (§ 104.) No agreement, except to commit a felony upon the person of another, or to commit arson, or burglary, amounts to a conspiracy, unless some act, beside such agreement, be done to effect the object thereof, by one or more of the parties to such agreement.

TITLE VIII.

OF CRIMES AGAINST THE PERSON.

CHAPTER I. *Homicide.*

II. *Mayhem.*

III. *Kidnapping.*

IV. *Robbery.*

V. *Attempts to kill.*

VI. *Assaults with intent to commit felony, other than assaults with intent to murder.*

VII. *Duels and challenges.*

VIII. *False imprisonment.*

IX. *Assault and battery.*

X. *Libel.*

CHAPTER I.

HOMICIDE.

SECTION 187. Murder defined.

188. Malice defined.

189. Degrees of murder.

190. Punishment of murder.

191. Petit treason abolished.

192. Manslaughter defined. Voluntary and involuntary manslaughter.

193. Punishment of manslaughter.

194. Deceased must die within a year and a day.

195. Excusable homicide.

196. Justifiable homicide by public officers.

197. Justifiable homicide by other persons.

198. Bare fear not to justify killing.

199. Justifiable and excusable homicide not punishable.

187. Murder is the unlawful killing of a human being, with malice aforethought. Murder defined.

188. Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart. Malice defined

189. (§ 21.) All murder which is perpetrated by means of poison, or lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration or attempt to perpetrate arson, rape, robbery, or burglary, is murder of the first degree; and all other kinds of murder are of the second degree. Degrees of murder.

190. (§ 21.) Every person guilty of murder in the first degree shall suffer death, and every person guilty of murder in the second degree is punishable by imprisonment in the State Prison not less than ten years. Punishment of murder.

Petit
treason
abolished.

191. (§ 39.) The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason, are abolished, and these offenses are homicides, punishable in the manner prescribed by this Chapter.

Man-
slaughter
defined.
Voluntary
and invol-
untary
man-
slaughter.

192. Manslaughter is the unlawful killing of a human being, without malice. It is of two kinds:

1. Voluntary—upon a sudden quarrel or heat of passion.
2. Involuntary—in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.

Punish-
ment of
man-
slaughter.

193. (§ 26.) Manslaughter is punishable by imprisonment in the State Prison not exceeding ten years.

Deceased
must die
within a
year and a
day.

194. (§ 27.) To make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received or the cause of death administered; in the computation of which the whole of the day on which the act was done shall be reckoned the first.

Excusable
homicide.

195. Homicide is excusable in the following cases:

1. When committed by accident and misfortune, in lawfully correcting a child or servant, or in doing any other lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent.
2. When committed by accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, when no undue advantage is taken, nor any dangerous weapon used, and when the killing is not done in a cruel or unusual manner.

196. Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either—

Justifiable
homicide
by public
officers.

1. In obedience to any judgment of a competent Court; or,

2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,

3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

197. Homicide is also justifiable when committed by any person in either of the following cases:

Justifiable
homicide
by other
persons.

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,

2. When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,

3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mortal combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or,

4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Bare fear
not to
justify
killing.

198. (§ 30.) A bare fear of the commission of any of the offenses mentioned in Subdivisions 2 and 3 of the preceding section, to prevent which homicide may be lawfully committed, is not sufficient to justify it. But the circumstances must be sufficient to excite the fears of a reasonable person, and the party killing must have acted under the influence of such fears alone.

Justifiable
and
excusable
homicide
not punish-
able.

199. (§ 36.) The homicide appearing to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged.

CHAPTER II.

MAYHEM.

SECTION 203. Mayhem defined.

204. Mayhem, how punishable.

Mayhem
defined.

203. (§ 46.) Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures, or renders it useless, or who cuts out or disables the tongue, puts out an eye, slits the nose, ear, or lip, is guilty of mayhem.

Mayhem,
how pun-
ishable.

204. (§ 46.) Mayhem is punishable by imprisonment in the State Prison not exceeding fourteen years.

CHAPTER III.

KIDNAPPING.

SECTION 207. Kidnapping defined.

208. Punishment of kidnapping.

207. (§§ 53, 54, 55.) Every person who forcibly steals, takes, or arrests any person in this State, and carries him into another country, State, or county, or who forcibly takes or arrests any person, with a design to take him out of this State, without having established a claim according to the laws of the United States or of this State, or who hires, persuades, entices, decoys, or seduces by false promises, misrepresentations, or the like, any person to go out of this State, or to be taken or removed therefrom, for the purpose and with the intent to sell such person into slavery or involuntary servitude, or otherwise to employ him for his own use, or to the use of another, without the free will and consent of such persuaded person, is guilty of kidnapping. Kidnap-
ping
defined.

208. (§ 54.) Kidnapping is punishable by imprisonment in the State Prison not less than one nor more than ten years. Punish-
ment of
kidnap-
ping.

CHAPTER IV.

ROBBERY.

SECTION 211. Robbery defined.

212. What fear may be an element in robbery.

213. Punishment of robbery.

211. (§ 59.) Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear. Robbery
defined.

What fear
may be an
element in
robbery.

212. The fear which constitutes robbery may be either—

1. The fear of an unlawful injury, immediate or future, to the person or property of the person robbed, or of any relative of his, or member of his family; or,

2. The fear of an immediate and unlawful injury to the person or property of any one in the company of the person robbed at the time of the robbery.

Punish-
ment of
robbery.

213. (§ 59.) Robbery is punishable by imprisonment in the State Prison not less than one year.

CHAPTER V.

ATTEMPTS TO KILL.

SECTION 216. Administering poison.

217. Assault with intent to commit murder.

Adminis-
tering
poison.

216. (§ 45.) Every person who, with intent to kill, administers, or causes or procures to be administered, to another, any poison or other noxious or destructive substance or liquid, but by which death is not caused, is punishable by imprisonment in the State Prison not less than ten years.

Assault
with intent
to commit
murder.

217. (§ 50.) Every person who assaults another with intent to commit murder, is punishable by imprisonment in the State Prison not less than one nor more than fourteen years.

CHAPTER VI.

ASSAULTS WITH INTENT TO COMMIT FELONY, OTHER THAN ASSAULTS WITH INTENT TO MURDER.

SECTION 220. Assaults with intent to commit rape.

221. Other assaults.

222. Administering stupefying drugs.

220. (§ 50.) Every person who assaults another with intent to commit rape, the infamous crime against nature, mayhem, robbery, or grand larceny, is punishable by imprisonment in the State Prison not less than one nor more than fourteen years. Assault with intent to commit rape.

221. Every person who is guilty of an assault, with intent to commit any felony, except an assault with intent to commit murder, the punishment for which assault is not prescribed by the preceding section, is punishable by imprisonment in the State Prison not exceeding five years, or in a County Jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both. Other assaults.

222. Every person guilty of administering to another any chloroform, ether, laudanum, or other narcotic, anæsthetic, or intoxicating agent, with intent thereby to enable or assist himself or any other person to commit a felony, is guilty of felony. Administering stupefying drugs.

CHAPTER VII.

DUELS AND CHALLENGES.

SECTION 225. Duel defined.

226. Punishment for fighting a duel, when death ensues.

227. Punishment for fighting a duel, although death does not ensue.

228. Persons fighting duels, etc., disqualified from holding office, etc.

229. Posting for not fighting.

230. Duties of officers to prevent duels.

231. Leaving the State with intent to evade laws against dueling.

232. Witness' privilege.

225. A duel is any combat with deadly weapons, fought between two or more persons, by previous agreement or upon a previous quarrel. Duel defined.

Punish-
ment for
fighting a
duel, when
death
ensues.

226. Every person guilty of fighting any duel, from which death ensues within a year and a day, is punishable by imprisonment in the State Prison not less than one nor more than seven years.

Punish-
ment for
fighting
a duel,
although
death does
not ensue.

227. Every person guilty of fighting any duel, although no death or wound ensues, is punishable by imprisonment in the State Prison not exceeding one year.

Persons
fighting
duels, etc.,
disquali-
fied from
holding
office, etc.

228. Every person guilty of fighting a duel, or who sends or accepts a challenge to fight a duel, or who acts as a second therein, is forever disqualified from holding any office, or from exercising the elective franchise in this State.

Posting for
not fighting

229. (§ 43.) Every person who posts or publishes another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, or who uses any reproachful or contemptuous language, verbal, written, or printed, to or concerning another, for not sending or accepting a challenge to fight a duel, or with intent to provoke a duel, is guilty of a misdemeanor.

Duties of
officers to
prevent
duels.

230. Every Judge, Justice of the Peace, Sheriff, or other officer bound to preserve the public peace, who has knowledge of the intention on the part of any persons to fight a duel, and who does not exert his official authority to arrest the party and prevent the duel, is punishable by fine not exceeding one thousand dollars.

Leaving
the State
with intent
to evade
laws
against
dueling.

231. Every person who leaves this State with intent to evade any of the provisions of this Chapter, and to commit any act out of this State such as is prohibited by this Chapter, and who does any act, although out of this State, which would be punishable by such provisions if committed within this State, is punishable in the same manner as he would have

been in case such act had been committed within this State.

232. No person shall be excused from testifying or answering any question upon any investigation or trial for a violation of either of the provisions of this Chapter, upon the ground that his testimony might tend to convict him of a crime. But no evidence given upon any examination of a person so testifying shall be received against him in any criminal prosecution or proceeding.

Witness' privilege.

CHAPTER VIII.

FALSE IMPRISONMENT.

SECTION 236. False imprisonment defined.

237. False imprisonment, how punished.

236. (§ 52.) False imprisonment is the unlawful violation of the personal liberty of another.

False imprisonment defined.

237. (§ 52.) False imprisonment is punishable by fine not exceeding five thousand dollars, or by imprisonment in the County Jail not more than one year, or both.

False imprisonment, how punished.

CHAPTER IX.

ASSAULT AND BATTERY.

SECTION 240. Assault defined.

241. Assault, how punished.

242. Battery defined.

243. Battery, how punished.

244. Assaults with caustic chemicals.

245. Assaults with deadly weapons.

240. (§ 49.) An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

Assault defined.

**Assault,
how
punished.** 241. (§ 49.) An assault is punishable by fine not exceeding five hundred dollars, or by imprisonment in the County Jail not exceeding three months.

**Battery
defined.** 242. (§ 51.) A battery is any willful and unlawful use of force or violence upon the person of another.

**Battery,
how
punished.** 243. (§ 51.) A battery is punishable by fine not exceeding one thousand dollars, or by imprisonment in the County Jail not exceeding one year.

**Assaults
with
caustic
chemicals.** 244. Every person who willfully and maliciously places or throws, or causes to be placed or thrown, upon the person of another, any vitriol, corrosive acid, or caustic chemical of any nature, with the intent to injure the flesh or disfigure the body of such person, is punishable by imprisonment in the State Prison not less than one nor more than fourteen years.

**Assaults
with
deadly
weapons.** 245. (§ 50.) Every person who, with intent to do bodily harm, and without just cause or excuse, or when no considerable provocation appears, or when the circumstances show an abandoned and malignant heart, commits an assault upon the person of another with a deadly weapon, instrument, or other thing, is punishable by imprisonment in the State Prison not exceeding two years, or by fine not exceeding five thousand dollars, or by both.

CHAPTER X.

LIBEL.

SECTION 248. Libel defined.

249. Punishment of libel.

250. Malice presumed.

251. Truth may be given in evidence. Jury to determine law and fact.

252. Publication defined.

253. Liability of editors and publishers.

SECTION 254. Publishing a true report of public official proceedings privileged.

255. Extent of privilege.

256. Other privileged communications.

257. Threatening to publish libel. Offer to prevent publication, with intent to extort money.

248. (§ 120.) A libel is a malicious defamation, expressed either by printing or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural defects of one who is alive, and thereby to expose him to public hatred, contempt, or ridicule. Libel defined.

249. (§ 120.) Every person who willfully, and with a malicious intent to injure another, publishes or procures to be published any libel, is punishable by fine not exceeding five thousand dollars, or imprisonment in the County Jail not exceeding one year. Punishment of libel.

250. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown. Malice presumed.

251. (§ 120.) In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it appears to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted. The jury have the right to determine the law and the fact. Truth may be given in evidence. Jury to determine law and fact.

252. To sustain a charge of publishing a libel, it is not needful that the words or things complained of should have been read or seen by another. It is enough that the accused knowingly parted with the immediate custody of the libel under circumstances which exposed it to be read or seen by any other person than himself. Publication defined.

Liability of
editors and
publishers.

253. Each author, editor, and proprietor of any book, newspaper, or serial publication, is chargeable with the publication of any words contained in any part of such book, or number of such newspaper or serial.

Publishing
a true
report
of public
official pro-
ceedings
privileged.

254. No reporter, editor, or proprietor of any newspaper is liable to any prosecution for a fair and true report of any judicial, legislative, or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice in making such report, which shall not be implied from the mere fact of publication.

Extent of
privilege.

255. Libelous remarks or comments connected with matter privileged by the last section receive no privilege by reason of their being so connected.

Other
privileged
communi-
cations.

256. A communication made to a person interested in the communication, by one who was also interested or who stood in such relation to the former as to afford a reasonable ground for supposing his motive innocent, is not presumed to be malicious, and is a privileged communication.

Threaten-
ing to pub-
lish libel.

257. Every person who threatens another to publish a libel concerning him, or any parent, husband, wife, or child of such person, or member of his family, and every person who offers to prevent the publication of any libel upon another person, with intent to extort any money or other valuable consideration from any person, is guilty of a misdemeanor.

Offer to
prevent
publica-
tion, with
intent to
extort
money.

TITLE IX.

OF CRIMES AGAINST THE PERSON AND AGAINST PUBLIC DECENCY AND GOOD MORALS.

CHAPTER I. *Rape, abduction, carnal abuse of children, and seduction.*II. *Abandonment and neglect of children.*III. *Abortions.*IV. *Child stealing.*V. *Bigamy, incest, and the crime against nature.*VI. *Violating sepulture and the remains of the dead.*VII. *Crimes against religion and conscience, and other offenses against good morals.*VIII. *Indecent exposure, obscene exhibitions, books and prints, and bawdy and other disorderly houses.*IX. *Lotteries.*X. *Gaming.*XI. *Pawnbrokers.*XII. *Other injuries to persons.*

CHAPTER I.

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, AND SEDUCTION.

SECTION 261. *Rape defined.*262. *When physical ability must be proved.*263. *Penetration sufficient.*264. *Punishment of rape.*265. *Abduction of women.*266. *Seduction for purposes of prostitution.*267. *Abduction.*

261. (§ 47.) Rape is an act of sexual intercourse accomplished with a female, not the wife of the perpetrator, under either of the following circumstances: Rape defined.

Same.

1. Where the female is under the age of ten years.

2. Where she is incapable, through lunacy or any other unsoundness of mind, whether temporary or permanent, of giving legal consent.

3. Where she resists, but her resistance is overcome by force or violence.

4. Where she is prevented from resisting by threats of immediate and great bodily harm, accompanied by apparent power of execution; or by any intoxicating, narcotic, or anæsthetic substance, administered by or with the privity of the accused.

5. Where she is, at the time, unconscious of the nature of the act, and this is known to the accused.

6. Where she submits, under a belief that the person committing the act is her husband, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce such belief.

When physical ability must be proved.

262. No conviction for rape can be had against one who was under the age of fourteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, and beyond a reasonable doubt.

Penetration sufficient.

263. The essential guilt of rape consists in the outrage to the person and feelings of the female. Any sexual penetration, however slight, is sufficient to complete the crime.

Punishment of rape.

264. (§ 47.) Rape is punishable by imprisonment in the State Prison not less than five years.

Abduction of women.

265. Every person who takes any woman unlawfully, against her will, and by force, menace, or duress, compels her to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the State Prison not less than two nor more than fourteen years.

266. Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of twenty-five years, into any house of ill-fame or of assignation, or elsewhere, for the purpose of prostitution; and every person who aids or assists in such abduction for such purpose; and every person who, by any false pretenses, false representation, or other fraudulent means, procures any female to have illicit carnal connection with any man, is punishable by imprisonment in the State Prison not exceeding five years, or by imprisonment in a County Jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Seduction
for
purposes of
prostitution.

NOTE.—The following statutes on kindred offenses are here inserted as supplementing this Code.—Stats. 1871-2, p. 184:

An Act to punish seduction.

[Approved March 1, 1872.]

[Enacting clause.]

SECTION 1. Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of eighteen years, into any house of ill fame, or of assignation, or elsewhere, for the purpose of prostitution, and every person who aids or assists in such abduction for such purpose, and every person who by any false pretenses, false representation, or other fraudulent means, procures any female to have illicit carnal connection with any man, is punishable by imprisonment in the State Prison not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

This is identical with the Code section, except in the age of the female and term of the imprisonment.

Stats. 1871-2, p. 380:

An Act to punish adultery.

[Approved March 15, 1872.]

[Enacting clause.]

SECTION 1. Every person who lives in a state of open and notorious cohabitation and adultery is guilty of a misdemeanor, and is punishable by a fine not exceeding one thousand dollars, or imprisonment in the County Jail not exceeding one year, or by both.

SEC. 2. If two persons, each being married to

another, live together in a state of open and notorious cohabitation and adultery, each is guilty of a felony, and is punishable by imprisonment in the State Prison not exceeding five years.

SEC. 3. A recorded certificate of marriage, or a certified copy thereof, there being no decree of divorce, proves the marriage of a person for the purposes of this Act.

Abduction. 267. Every person who takes away any female under the age of eighteen years from her father, mother, guardian, or other person having the legal charge of her person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the State Prison not exceeding five years, and a fine not exceeding one thousand dollars.

CHAPTER II.

ABANDONMENT AND NEGLECT OF CHILDREN.

SECTION 270. Omitting to provide child with necessities.

271. Deserting child.

Omitting to provide child with necessities 270. Every parent of any child who willfully omits, without lawful excuse, to perform any duty imposed upon him by law, to furnish necessary food, clothing, shelter, or medical attendance for such child, is guilty of a misdemeanor.

Deserting child. 271. Every parent of any child under the age of six years, and every person to whom any such child has been confided for nurture or education, who deserts such child in any place whatever, with intent wholly to abandon it, is punishable by imprisonment in the State Prison not exceeding seven years, or in a County Jail not exceeding one year.

CHAPTER III.

ABORTIONS.

SECTION 274. Administering drugs, etc., with intent to produce miscarriage.

275. Submitting to an attempt to produce miscarriage.

274. Every person who provides, supplies, or administers to any pregnant woman, or procures any such woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the State Prison not less than two nor more than five years.

Administering drugs, etc., with intent to produce miscarriage.

275. Every woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in the State Prison not less than one nor more than five years.

Submitting to an attempt to produce miscarriage.

CHAPTER IV.

CHILD STEALING.

SECTION 278. Definition and punishment of child stealing.

278. Every person who maliciously, forcibly, or fraudulently takes or entices away any child under the age of twelve years, with intent to detain and conceal such child from its parent, guardian, or other person having the lawful charge of such child, is punishable by imprisonment in the State Prison not exceeding ten years, or by imprisonment in a County

Definition and punishment of child stealing.

Jail not exceeding one year, and a fine not exceeding five hundred dollars.

CHAPTER V.

BIGAMY, INCEST, AND THE CRIME AGAINST NATURE.

SECTION 281. Bigamy defined.

282. Exceptions.

283. Punishment of bigamy.

284. Marrying a husband or wife of another.

285. Incest.

286. Crime against nature.

287. Penetration sufficient to complete the crime.

**Bigamy
defined.**

281. (§ 121.) Every person having a husband or wife living, who marries any other person, except in the cases specified in the next section, is guilty of bigamy.

Exceptions

282. The last section does not extend—

1. To any person by reason of any former marriage, whose husband or wife by such marriage has been absent for five successive years without being known to such person within that time to be living; nor,

2. To any person by reason of any former marriage which has been pronounced void, annulled, or dissolved by the judgment of a competent Court.

**Punish-
ment of
bigamy.**

283. (§ 121.) Bigamy is punishable by fine not exceeding two thousand dollars and by imprisonment in the State Prison not exceeding three years.

**Marrying a
husband or
wife of
another.**

284. (§ 122.) Every person who knowingly and willfully marries the husband or wife of another, in any case in which such husband or wife would be punishable under the provisions of this Chapter, is punishable by fine not less than two thousand dollars, or by imprisonment in the State Prison not exceeding three years.

285. (§ 123.) Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who commit fornication or adultery with each other, are punishable by imprisonment in the State Prison not exceeding ten years. Incest.

286. (§ 48.) Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the State Prison not less than five years. Crime against nature.

287. Any sexual penetration, however slight, is sufficient to complete the crime against nature. Penetration sufficient to complete the crime.

CHAPTER VI.

VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD.

SECTION 290. Unlawful mutilation or removal of dead bodies. Not to apply to certain persons.

291. Unlawful removal of dead body from grave for dissection, etc.

292. Who are charged with the duty of burial.

293. Punishment for omitting to bury.

294. Who are entitled to custody of a body.

295. Arresting or attaching a dead body. .

296. Defacing tombs and monuments.

290. Every person who mutilates, disinters, or removes from the place of sepulture the dead body of a human being without authority of law, is guilty of felony. But the provisions of this section do not apply to any person who removes the dead body of a relative or friend for reinterment. Unlawful mutilation or removal of dead bodies.
Not to apply to certain persons.

291. Every person who removes any part of the dead body of a human being from any grave or other place where the same has been buried, or from any place where the same is deposited while awaiting Unlawful removal of dead body from grave for dissection, etc.

burial, with intent to sell the same or to dissect it, without authority of law, or from malice or wantonness, is punishable by imprisonment in the State Prison not exceeding five years.

Who are
charged
with the
duty of
burial.

292. The duty of burying the body of a deceased person devolves upon the persons hereinafter specified:

1. If the deceased was a married woman, the duty of burial devolves upon her husband;

2. If the deceased was not a married woman, but left any kindred, the duty of burial devolves upon the person or persons in the same degree nearest of kin to the deceased, being of adult age, and within this State, and possessed of sufficient means to defray the necessary expenses;

3. If the deceased left no husband nor kindred answering the foregoing description, the duty of burial devolves upon the Coroner conducting an inquest upon the body of the deceased, if any such inquest is held; if there is none, then upon the persons charged with the support of the poor in the locality in which the death occurs;

4. In case the person upon whom the duty of burial is cast by the foregoing provisions omits to make such burial within a reasonable time, the duty devolves upon the person next specified; and if all omit to act, it devolves upon the tenant; or if there is no tenant, upon the owner of the premises or master; or if there is no master, upon the owner of the vessel in which the death occurs or the body is found.

Punish-
ment for
omitting to
bury.

293. Every person upon whom the duty of making burial of the remains of a deceased person is imposed by law, who omits to perform that duty within a reasonable time, is guilty of a misdemeanor; and, in addition to the punishment prescribed therefor, is liable to pay to the person performing the duty in his

stead treble the expenses incurred by the latter in making the burial, to be recovered in a civil action.

294. The person charged by law with the duty of burying the body of a deceased person is entitled to the custody of such body for the purpose of burying it; except that in the case in which an inquest is required by law to be held upon a dead body by a Coroner, such Coroner is entitled to its custody until such inquest has been completed.

Who are entitled to custody of a body.

295. Every person who arrests or attaches any dead body of a human being, upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a misdemeanor.

Arresting or attaching a dead body.

296. Every person who willfully and maliciously defaces, breaks, destroys, or removes any tomb, monument, or gravestone, erected to any deceased person, or any memento or memorial, or any ornamental plant, tree, or shrub, appertaining to the place of burial of a human being, or who shall mark, deface, injure, destroy, or remove any fence, post, rail, or wall of any cemetery or graveyard, is guilty of a misdemeanor.

Defacing tombs and monuments.

CHAPTER VII.

OF CRIMES AGAINST RELIGION AND CONSCIENCE, AND OTHER OFFENSES AGAINST GOOD MORALS.

SECTION 299. Barbarous and noisy amusements, and theaters where liquors are sold, prohibited on Sunday.

300. Keeping open places of business on Sunday.

301. Limitation on operation of preceding section.

302. Disturbing religious meetings.

303. Sale of liquors at theaters and employing women to sell liquors thereat.

SECTION 394. Selling liquors at mass meetings.

394. Violation of preceding section.

394. Prohibiting female under seventeen years of age to play musical instruments in public. Female under seventeen playing musical instruments in public.

395. Prohibiting female under seventeen years of age to exhibit herself for hire. Female under seventeen exhibiting herself for hire.

Barbarous
and noisy
amuse-
ments, and
theaters
where
liquors
are sold,
prohibited
on Sunday.

299. Every person who on the christian Sabbath, gets up, exhibits, opens, or maintains, or aids in getting up, exhibiting, opening, or maintaining any bull, bear, cock, or prize fight, horse race, circus, gambling house, or saloon, or any barbarous and noisy amusement, or who keeps, conducts, or exhibits any theater, melodeon, dance cellar, or other place of musical, theatrical, or operatic performance, spectacle, or representation where any wines, liquors, or intoxicating drinks are bought, sold, used, drank, or given away, or who purchases any ticket of admission, or directly or indirectly pays any admission fee to or for the purpose of witnessing or attending any such place, amusement, spectacle, performance, or representation, is guilty of a misdemeanor.

Keeping
open places
of business
on Sunday.

300. Every person who keeps open on Sunday any store, workshop, bar, saloon, banking house, or other place of business, for the purpose of transacting business therein, is punishable by fine not less than five nor more than fifty dollars.

Limitation
on opera-
tion of
preceding
section.

301. The provisions of the preceding section do not apply to persons who, on Sunday, keep open hotels, boarding houses, barber shops, baths, markets, restaurants, taverns, livery stables, or retail drug stores for the legitimate business of each, or such manufacturing establishments as are usually kept in continued operation.

Disturbing
religious
meetings.

302. (§ 171.) Every person who willfully disturbs or disquiets any assemblage of people met for relig-

ious worship by noise, profane discourse, rude, or indecent behavior, or by any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting, is guilty of a misdemeanor.

303. Every person who sells or furnishes any malt, vinous, or spirituous liquors to any person in the auditorium or lobbies of any theater, melodeon, museum, circus, or caravan, or place where any farce, comedy, tragedy, ballet, opera, or play is being performed, or any exhibition of dancing, juggling, wax work figures and the like is being given for public amusement, and every person who employs or procures, or causes to be employed or procured, any female to sell or furnish any malt, vinous, or spirituous liquors at such place, is guilty of a misdemeanor.

Sale of
liquors at
theaters,
and
employing
women to
sell liquors
thereat.

304. Every person who erects or keeps a booth, tent, stall, or other contrivance for the purpose of selling or otherwise disposing of any wine, or spirituous, or intoxicating liquors, or any drink of which wines, spirituous, or intoxicating liquors form a part, or for selling or otherwise disposing of any article of merchandise, or who peddles, or hawks about any such drink or article, within one mile of any camp or field meeting for religious worship, during the time of holding such meeting, is punishable by fine of not less than five nor more than five hundred dollars.

Selling
liquors at
camp
meeting.

305. The provisions of the preceding section do not apply to any person carrying on a regular business in the sale of liquors or other articles, which business was established prior to the appointment of the meeting referred to in such section.

Limitation
of preced-
ing section.

306. Every person who causes, procures, or employs any female under the age of seventeen years to play for hire, drink, or gain upon any musical instru-

Procuring
female
under
seventeen
years of
age to play
musical
instru-
ments
in public.

Female
under
seventeen
playing
musical
instru-
ments
in public.

ment, in any drinking saloon, ball room, dance cellar, public garden, or any public highway, common, or street, or on a ship, steamboat, or railroad car, or in any place whatsoever where two or more persons are assembled together, is punishable by fine not exceeding five hundred dollars, or by imprisonment in the County Jail not exceeding three months, or by both; and any female under the age of seventeen years so playing upon any musical instrument whatsoever, is punishable by fine not exceeding one hundred dollars, or by imprisonment in the County Jail not exceeding one month, or by both.

Procuring
female
under
seventeen
years of
age to
exhibit
herself
for hire.

307. Every person who causes, or procures, or employs any female, under the age of seventeen years, to dance, promenade, or otherwise exhibit herself for hire, drink, or gain, in any drinking saloon, dance cellar, ball room, public garden, public highway, or in any place whatsoever (theaters excepted), where two or more persons are assembled together, is punishable by fine not exceeding five hundred dollars, or by imprisonment in the County Jail not exceeding three months, or by both; and every female under the age of seventeen years so dancing, promenading, or exhibiting herself, is punishable by fine not exceeding one hundred dollars, or by imprisonment in the County Jail not exceeding one month, or by both.

Female
under
seventeen
exhibiting
herself
for hire.

NOTE.—The following offense on a kindred subject is punished by Stats. 1871-2, p. 231:

An Act to prevent the sale of intoxicating drinks to minors.

[Approved March 4, 1872.]

[Enacting clause.]

SECTION 1. Every person who sells or gives to another under the age of sixteen years, to be by him drank at the time as a beverage, any intoxicating drink, is guilty of a misdemeanor, and punishable by a fine not exceeding one hundred dollars, or by imprisonment in the County Jail not exceeding three months;

provided, that nothing in this Act shall be deemed to apply to parents of such children, or guardians of their wards, or physicians.

CHAPTER VIII.

INDECENT EXPOSURE, OBSCENE EXHIBITIONS, BOOKS AND PRINTS, AND BAWDY AND OTHER DISORDERLY HOUSES.

SECTION 311. Indecent exposures, exhibitions, and pictures.

312. Seizure of indecent articles authorized.

313. Their character to be summarily determined.

314. Their destruction.

315. Keeping or residing in a house of ill-fame.

316. Keeping disorderly houses.

311. Every person who willfully and lewdly, Indecent exposures, exhibitions, and pictures.
either:

1. Exposes his person or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

2. Procures, counsels, or assists any person so to expose himself, or to take part in any model artist exhibition, or to make any other exhibition of himself to public view, or to the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts; or,

3. Writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale, or exhibits, any obscene or indecent writing, paper, or book; or designs, copies, draws, engraves, paints, or otherwise prepares any obscene or indecent picture or print; or moulds, cuts, casts, or otherwise makes any obscene or indecent figure; or,

4. Writes, composes, or publishes any notice or advertisement of any such writing, paper, book, pic-

Same. ture, print, or figure; or any notice or advertisement for producing or facilitating a miscarriage; or,

5. Sings any lewd or obscene song, ballad, or other words in any public place, or in any place where there are persons present to be annoyed thereby;
—Is guilty of a misdemeanor.

Seizure of
indecent
articles
authorized.

312. Every person who is authorized or enjoined to arrest any person for a violation of Subdivision 3 of the last section, is equally authorized and enjoined to seize any obscene or indecent writing, paper, book, picture, print, or figure found in possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

Their
character
to be
summarily
determined

313. The magistrate to whom any obscene or indecent writing, paper, book, picture, print, or figure is delivered, pursuant to the foregoing section, must, upon the examination of the accused, or, if the examination is delayed or prevented, without awaiting such examination, determine the character of such writing, paper, book, picture, print, or figure, and if he finds it to be obscene or indecent, he must deliver one copy to the District Attorney of the county in which the accused is liable to indictment or trial, and must at once destroy all the other copies.

Their
destruction

314. Upon the conviction of the accused, such District Attorney must cause any writing, paper, book, picture, print, or figure, in respect whereof the accused stands convicted, and which remains in the possession or under the control of such District Attorney, to be destroyed.

Keeping or
residing in
a house of
ill-fame.

315. Every person who keeps a house of ill-fame in this State, resorted to for the purposes of prostitution or lewdness, or who willfully resides in such house, is guilty of a misdemeanor.

316. Every person who keeps any disorderly house or any house of public resort, by which the peace, comfort, or decency of the immediate neighborhood is habitually disturbed, or who keeps any inn in a disorderly manner, is guilty of a misdemeanor.

Keeping
disorderly
houses.

CHAPTER IX.

LOTTERIES.

SECTION 319. Lottery defined.

320. Punishment for drawing lottery.

321. Punishment for selling lottery tickets.

322. Aiding lotteries.

323. Lottery offices. Advertising lottery offices.

324. Insuring lottery tickets. Publishing offers to insure.

325. Property offered for disposal in lottery forfeited.

326. Letting building for lottery purposes.

319. A lottery is any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or any interest in such property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known.

Lottery
defined.

320. Every person who contrives, prepares, sets up, proposes, or draws any lottery, is guilty of a misdemeanor.

Punish-
ment for
drawing
lottery.

321. Every person who sells, gives, or in any manner whatever, furnishes or transfers to or for any other person any ticket, chance, share, or interest, or any paper, certificate, or instrument purporting or understood to be or to represent any ticket, chance, share,

Punish-
ment for
selling
lottery
tickets.

or interest in, or depending upon the event of any lottery, is guilty of a misdemeanor.

Aiding
lotteries.

322. Every person who aids or assists, either by printing, writing, advertising, publishing, or otherwise in setting up, managing, or drawing any lottery, or in selling or disposing of any ticket, chance, or share therein, is guilty of a misdemeanor. •

Lottery
offices.

323. Every person who opens, sets up, or keeps, by himself or by any other person, any office or other place for the sale of, or for registering the number of any ticket in any lottery, or who, by printing, writing, or otherwise, advertises or publishes the setting up, opening, or using of any such office, is guilty of a misdemeanor.

Advertis-
ing lottery
offices.

Insuring
lottery
tickets.

324. Every person who insures or receives any consideration for insuring for or against the drawing of any ticket in any lottery whatever, whether drawn or to be drawn within this State or not, or who receives any valuable consideration upon any agreement to repay any sum, or deliver the same, or any other property, if any lottery ticket or number of any ticket in any lottery shall prove fortunate or unfortunate, or shall be drawn or not be drawn, at any particular time or in any particular order, or who promises or agrees to pay any sum of money, or to deliver any goods, things in action, or property, or to forbear to do anything for the benefit of any person, with or without consideration, upon any event or contingency dependent on the drawing of any ticket in any lottery, or who publishes any notice or proposal of any of the purposes aforesaid, is guilty of a misdemeanor.

Publishing
offers to
insure.

Property
offered for
disposal in
lottery
forfeited.

325. All moneys and property offered for sale or distribution in violation of any of the provisions of this Chapter are forfeited to the State, and may be recov-

ered by information filed, or by an action brought by Same. the Attorney General, or by any District Attorney, in the name of the State. Upon the filing of the information or complaint, the Clerk of the Court, or if the suit be in a Justice's Court, the Justice, must issue an attachment against the property mentioned in the complaint or information, which attachment has the same force and effect against such property, and is issued in the same manner as attachments issued from the District Courts in civil cases.

326. Every person who lets, or permits to be used, any building or vessel, or any portion thereof, knowing that it is to be used for setting up, managing, or drawing any lottery, or for the purpose of selling or disposing of lottery tickets, is guilty of a misdemeanor. Letting building for lottery purposes.

CHAPTER X.

GAMING.

SECTION 330. Gaming prohibited. Penalty.

331. Permitting gambling in houses owned or rented.

332. Winning at play by fraudulent means.

333. Witnesses neglecting or refusing to attend trial.

334. Witness' privilege.

335. Duties of District Attorneys, Sheriffs, and others.

330. Every person who deals, plays, or carries on, opens or causes to be opened, or who conducts, either as owner or employé, whether for hire or not, any game of faro, monté, roulette, lansquenet, rouge et noire, rondo, or any banking game played with cards, dice, or any other device, for money, checks, credit, or any other representative of value, is punishable by fine of not less than two hundred nor more than one Penalty. thousand dollars, and shall be imprisoned in the County Gaming prohibited.

Jail until such fine and costs of prosecution are paid, such imprisonment not to exceed one year.

Permitting
gambling
in houses
owned or
rented.

331. Every person who knowingly permits any of the games mentioned in the preceding section to be played, conducted, or dealt in any house owned or rented by such person, in whole or in part, is punishable as provided in the preceding section.

Winning at
play by
fraudulent
means.

332. Every person who, by any fraud, cheat, or device, or false pretense whatsoever, while playing at any game of chance, or while bearing any share in wagers played for, or while betting on sides or hands of such play, wins or acquires to himself or another any sum of money or valuable thing, is guilty of a misdemeanor.

Witnesses
neglecting
or refusing
to attend
trial.

333. Every person duly summoned as a witness for the prosecution, on any proceedings had under this Chapter, who neglects or refuses to attend, as required, is guilty of a misdemeanor.

Witness'
privilege.

334. No person, otherwise competent as a witness, is disqualified from testifying as such concerning the offense of gaming, on the ground that such testimony may criminate himself; but no prosecution can afterwards be had against him for any offense concerning which he testified.

Duties of
District
Attorneys,
Sheriffs,
and others.

335. Every District Attorney, Sheriff, Constable, or police officer must inform against and diligently prosecute persons whom they have reasonable cause to believe offenders against the provisions of this Chapter, and every such officer refusing or neglecting so to do, is guilty of a misdemeanor.

CHAPTER XI.

PAWNBROKERS.

. SECTION 338. Pawnbroking without license.

339. Failing to keep a register.

340. Charging unlawful rate of interest.

341. Selling before time of redemption has expired, or without notice.

342. Refusing to disclose particulars of sale.

. 343. Refusing to allow an officer with search warrant to inspect register of pledged articles.

338. Every person who carries on the business of a pawnbroker, by receiving goods in pledge for loans at any rate of interest above the rate of ten per cent per annum, except by authority of a license, is guilty of a misdemeanor. Pawnbroking without license.

339. Every person who carries on the business of a pawnbroker, who fails at the time of the transaction to enter in a register kept by him for that purpose, in the English language, the date, duration, amount, and rate of interest of every loan made by him, or an accurate description of the property pledged, or the name and residence of the pledgor, or to deliver to the pledgor a written copy of such entry, or to keep an account in writing of all sales made by him, is guilty of a misdemeanor. Failing to keep a register.

340. Every pawnbroker who charges or receives interest at the rate of more than four per cent per month, or who, by charging commissions, discount, storage, or other charge, or by compounding increases or attempts to increase such interest, is guilty of a misdemeanor. Charging unlawful rate of interest.

341. Every pawnbroker who sells any article pledged to him and unredeemed, until it has remained in his possession six months after the last day fixed by contract for redemption, or who makes any sale with- Selling before time of redemption has expired, or without notice.

out publishing in a newspaper printed in the city, town, or county, at least five days before such sale, a notice containing a list of the articles to be sold, and specifying the time and place of sale, is guilty of a misdemeanor.

Refusing
to disclose
particulars
of sale.

342. Every pawnbroker who willfully refuses to disclose to the pledgor or his agent the name of the purchaser and the price received by him for any article received by him in pledge and subsequently sold, or who, after deducting from the proceeds of any sale the amount of the loan and interest due thereon, and four per cent on the loan for expenses of sale, refuses, on demand, to pay the balance to the pledgor or his agent, is guilty of a misdemeanor.

Refusing
to allow
an officer
with search
warrant
to inspect
register of
pledged
articles.

343. Every pawnbroker who fails, refuses, or neglects to produce for inspection his register, or to exhibit all articles received by him in pledge, or his account of sales, to any officer holding a warrant authorizing him to search for personal property, or the order of a committing magistrate directing such officer to inspect such register, or examine such articles or account of sales, is guilty of a misdemeanor.

CHAPTER XII.

OTHER INJURIES TO PERSONS.

SECTION 346. Acts of intoxicated physicians.

347. Willfully poisoning food, medicine, or water.

348. Mismanagement of steamboats.

349. Mismanagement of steam boilers.

350. Counterfeiting trade marks.

351. Selling goods which bear counterfeit trade marks.

352. Definition of the phrase "counterfeited trade marks," *etc.*

353. "Trade mark" defined.

354. Refilling casks, *etc.*, bearing trade mark.

355. Defacing marks upon wrecked property and destroying bills of lading.

SECTION 356. Defacing marks upon logs, lumber, or wood.

357. Altering brands.

358. Frauds in affairs of special partnership.

359. Contracting or solemnizing incestuous or forbidden marriages.

360. Making false return or record of marriage.

361. Cruel treatment of lunatics, etc.

362. Refusing to issue or obey writ of habeas corpus.

363. Reconfining persons discharged upon writ of habeas corpus.

364. Concealing persons entitled to benefit of habeas corpus.

365. Innkeepers and carriers refusing to receive guests and passengers.

366. Counterfeiting quicksilver stamps.

367. Selling debased quicksilver.

346. Every physician who, in a state of intoxication, does any act as such physician to another person by which the life of such other person is endangered, is guilty of a misdemeanor.

Acts of
intoxicated
physicians.

347. Every person who willfully mingles any poison with any food, drink, or medicine, with intent that the same shall be taken by any human being, to his injury, and every person who willfully poisons any spring, well, or reservoir of water, is punishable by imprisonment in the State Prison for a term not less than one nor more than ten years.

Willfully
poisoning
food,
medicine,
or water.

348. Every captain, or other person having charge of any steamboat used for the conveyance of passengers, or of the boilers and engines thereof, who, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, or any apparatus or machinery connected therewith, by which bursting or breaking human life is endangered, is guilty of a misdemeanor.

Mismanagement
of
steamboats

349. Every engineer or other person having charge of any steam boiler, steam engine, or other apparatus for generating or employing steam, used in any manu-

Mismanagement
of steam
boilers.

factory, railway, or other mechanical works, who willfully, or from ignorance, or gross neglect, creates or allows to be created such an undue quantity of steam as to burst or break the boiler, or engine, or apparatus, or cause any other accident whereby human life is endangered, is guilty of a misdemeanor.

Counter-
feiting
trade
marks.

350. Every person who willfully forges or counterfeits, or procures to be forged or counterfeited, any trade mark usually affixed by any person to his goods, with intent to pass off any goods to which such forged or counterfeited trade mark is affixed or intended to be affixed, as the goods of such person, is guilty of a misdemeanor.

Selling
goods
which bear
counterfeit
trade
marks.

351. Every person who sells or keeps for sale any goods upon or to which any counterfeited trade mark has been affixed, intending to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemeanor.

Definition
of the
phrase
"counter-
feited trade
marks,"
etc.

352. The phrases "forged trade mark" and "counterfeited trade mark," or their equivalents, as used in this Chapter, include every alteration or imitation of any trade mark so resembling the original as to be likely to deceive.

"Trade
mark"
defined.

353. The phrase "trade mark," as used in the three preceding sections, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, or wrapper usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded, or sold by him, other than any name, word, or expression generally denoting any goods to be of some particular class or description.

Refilling
casks, etc.,
bearing
trade mark

354. Every person who has or uses any cask, bottle, vessel, case, cover, label, or other thing bearing or

having in any way connected with it the duly filed trade mark or name of another, for the purpose of disposing with intent to deceive or defraud of any article other than that which such cask, bottle, vessel, case, cover, label, or other thing originally contained or was connected with by the owner of such trade mark or name, is guilty of a misdemeanor.

355. Every person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof, with intent to prevent the owner from discovering its identity, or who destroys or suppresses any invoice, bill of lading, or other document tending to show the ownership, is guilty of a misdemeanor.

Defacing marks upon wrecked property and destroying bills of lading.

356. Every person who cuts out, alters, or defaces any mark made upon any log, lumber, or wood, or puts a false mark thereon with intent to prevent the owner from discovering its identity, is guilty of a misdemeanor.

Defacing marks upon logs, lumber, or wood.

357. (§ 65.) Every person who marks or brands, alters, or defaces the mark or brand of any horse, mare, colt, jack, jennet, mule, bull, ox, steer, cow, calf, sheep, goat, hog, shoat or pig belonging to another, with intent thereby to steal the same or to prevent identification thereof by the true owner, is punishable by imprisonment in the State Prison for not less than one nor more than five years.

Altering brands.

358. Every member of a special partnership who commits any fraud in the affairs of the partnership, is guilty of a misdemeanor.

Frauds in affairs of special partnership.

359. Every person authorized to solemnize marriage, who willfully and knowingly solemnizes any incestuous or other marriage forbidden by law, is punishable by fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the

Contracting or solemnizing incestuous or forbidden marriages.

County Jail not less than three months nor more than one year, or by bond.

Making
false return
in favor of
marriage.

360. Every person authorized to solemnize any marriage, who willfully makes a false return of any marriage or pretended marriage to the Recorder, and every person who willfully makes a false record of any marriage return, is punishable as provided in the preceding section.

Cruel
treatment
of inmates,
etc.

361. Every person guilty of any harsh, cruel, or unkind treatment of, or any neglect of duty towards, any idiot, lunatic, or insane person, is guilty of a misdemeanor.

Refusing to
issue a writ
of habeas
corpus.

362. Every officer or person to whom a writ of habeas corpus may be directed, who, after service thereof, neglects or refuses to obey the command thereof, is guilty of a misdemeanor.

Recommit-
ting persons
discharged
upon writ
of habeas
corpus.

363. Every person who, either solely or as member of a Court, knowingly and unlawfully recommits, imprisons, or restrains of his liberty, for the same cause, any person who has been discharged upon a writ of habeas corpus, is guilty of a misdemeanor.

Concealing
persons
entitled to
benefit of
habeas
corpus.

364. Every person having in his custody, or under his restraint or power, any person for whose relief a writ of habeas corpus has been issued, who, with the intent to elude the service of such writ or to avoid the effect thereof, transfers such person to the custody of another, or places him under the power or control of another, or conceals or changes the place of his confinement or restraint, or removes him without the jurisdiction of the Court or Judge issuing the writ, is guilty of a misdemeanor.

Innkeepers
and
carriers
refusing
to receive
guests and
passengers.

365. Every person, and every agent or officer of any corporation carrying on business as an innkeeper, or as a common carrier of passengers, who refuses,

without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor.

366. Every person who counterfeits, or who willfully uses the counterfeited seal or stamp of any person engaged in manufacturing or selling quicksilver, is guilty of a felony.

Counter-
feiting
quicksilver
stamps.

367. Every person who willfully sells, or offers for sale as pure, any debased or adulterated quicksilver, is guilty of a misdemeanor.

Selling
debased
quicksilver

TITLE X.

OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.

- SECTION 368. Death from explosions, etc.
 369. Death from collision on railroads.
 370. "Public nuisances" defined.
 371. Unequal damage.
 372. Maintaining a nuisance, a misdemeanor.
 373. Establishing or keeping pest houses within cities, towns, or villages.
 374. Putting dead animals in streets, rivers, etc.
 375. Keeping gunpowder, etc., unlawfully.
 376. Violation of quarantine laws by masters of vessels.
 377. Willful violation of health laws.
 378. Neglecting to perform duties under health law.
 379. Unlicensed piloting.
 380. Apothecary omitting to label drugs, or labeling them wrongfully, etc.
 381. Putting extraneous substances in packages of goods usually sold by weight, with intent to increase weight.
 382. Adulterating food, drugs, liquors, etc.
 383. Disposing of tainted food, etc.
 384. Setting woods on fire.
 385. Obstructing attempts to extinguish fires.
 386. Maintaining bridge or ferry without authority.
 387. Violating condition of undertaking to keep ferry.
 388. Riding or driving faster than a walk on toll bridges.

SECTION 389. Crossing toll bridges, etc., without paying toll.

390. Engineer of locomotive engine omitting to ring bell when crossing highway.

391. Intoxication of engineers, conductors, or drivers of locomotives or cars.

392. Placing passenger cars in front of freight cars.

393. Violation of duty by employes of railroad companies.

394. Exposing person infected with any contagious disease in a public place.

395. Frauds practiced to affect the market price.

396. Racing upon highways.

397. Selling liquor to Indians.

398. Selling firearms and ammunition to Indians.

399. Death from mischievous animals.

Death from
explosions,
etc.

368. Every person having charge of any steam boiler or steam engine, or other apparatus for generating or employing steam, used in any manufactory, or on any railroad, or in any vessel, or in any kind of mechanical work, who willfully, or from ignorance or neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine, or apparatus, or to cause any other accident whereby the death of a human being is produced, is punishable by imprisonment in the State Prison for not less than one nor more than ten years.

Death from
collision on
railroads.

369. Every conductor, engineer, brakeman, switchman, or other person having charge, wholly or in part, of any railroad, car, locomotive, or train, who willfully or negligently suffers or causes the same to collide with another car, locomotive, or train, or with any other object or thing whereby the death of a human being is produced, is punishable by imprisonment in the State Prison for not less than one nor more than ten years.

"Public
nuisances"
defined.

370. A public nuisance is a crime against the order and economy of the State, and consists in unlawfully doing any act, or omitting to perform any duty, which act or omission either:

1. Annoys, injures, or endangers the comfort, repose,

health, or safety of any considerable number of persons; or,

2. Offends public decency; or,

3. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake or navigable river, bay, stream, canal, or basin, or any public park, square, street, or highway; or,

4. In any way renders any considerable number of persons insecure in life or the use of property.

371. An act which affects a considerable number of persons, in either of the ways specified in the last section, is not less a nuisance because the extent of damage is unequal.

Unequal
damage.

372. Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

Maintain-
ing a
nuisance,
a misde-
meanor.

373. Every person who establishes or keeps, or causes to be established or kept, within the limits of any city, town, or village, any pest house, hospital, or place for persons affected with contagious or infectious diseases, is guilty of a misdemeanor.

Establish-
ing or
keeping
pest houses
within
cities,
towns, or
villages.

374. Every person who puts the carcass of any dead animal, or the offal from any slaughter pen, corral, or butcher shop, into any river, creek, pond, street, alley, public highway or road in common use, or who attempts to destroy the same by fire within one fourth of a mile of any city, town, or village, is guilty of a misdemeanor.

Putting
dead
animals in
streets,
rivers, etc.

375. Every person who makes or keeps gunpowder, nitro-glycerine, or other highly explosive substance, within any city or town, or who carries the same through the streets thereof, in any quantity or

Keeping
gunpow-
der, etc.,
unlawfully.

manner such as is prohibited by law, or by any ordinance of such city or town, is guilty of a misdemeanor.

Violation
of quaran-
tine laws
by masters
of vessels.

376. Every master of a vessel subject to quarantine or visitation by the Health Officer, arriving in the port of San Francisco, who refuses or omits:

1. To proceed with and anchor his vessel at the place assigned for quarantine, at the time of his arrival; or,

2. To submit his vessel, cargo, and passengers to the examination of the Health Officer, and to furnish all necessary information to enable that officer to determine to what length of quarantine and other regulations they ought, respectively, to be subject; or,

3. To remain with his vessel at quarantine during the period assigned for her quarantine, and while at quarantine to comply with the regulations prescribed by law, and with such as any of the officers of health, by virtue of authority given them by law, shall prescribe in relation to his vessel, his cargo, himself, his passengers, or crew;

—Is punishable by imprisonment in the County Jail not exceeding one year, or by fine not exceeding two thousand dollars, or both.

Willful
violation
of health
laws.

377. Every person who willfully violates any of the laws of this State relating to the preservation of the public health, is, unless a different punishment for such violation is prescribed by this Code, punishable by imprisonment in the County Jail not exceeding one year, or by fine not exceeding one thousand dollars, or both.

Neglecting
to perform
duties
under
health law.

378. Every person charged with the performance of any duty under the laws of this State relating to the preservation of the public health, who willfully neglects or refuses to perform the same, is guilty of a misdemeanor.

379. Every person, not authorized to act as pilot under the laws of this State, who pilots or offers to pilot any vessel to or from any port of this State for which there are commissioned or licensed pilots, or who pilots or offers to pilot any vessel to or from any port other than that for which he is commissioned or licensed, and for which there are pilots so commissioned or licensed, is guilty of a misdemeanor.

Unlicensed
piloting.

380. Every apothecary, druggist, or person carrying on business as a dealer in drugs or medicines, or person employed as clerk or salesman by such person, who, in putting up any drugs or medicines, or making up any prescription, or filling any order for drugs or medicines, willfully, negligently, or ignorantly omits to label the same, or puts an untrue label, stamp, or other designation of contents, upon any box, bottle, or other package containing any drugs or medicines, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor, or if death ensues, is guilty of a felony.

Apothe-
cary
omitting to
label drugs,
or labeling
them
wrongfully,
etc.

381. Every person who, in putting up in any bag, bale, box, barrel, or other package, any hops, cotton, wool, grain, hay, or other goods usually sold in bags, bales, boxes, barrels, or packages by weight, puts in or conceals therein anything whatever, for the purpose of increasing the weight of such bag, bale, box, barrel, or package, is punishable by a fine of twenty-five dollars for each offense.

Putting
extraneous
substances
in packages
of goods
usually
sold by
weight,
with intent
to increase
weight.

382. Every person who adulterates or dilutes any article of food, drink, drug, medicine, spirituous or malt liquor, or wine, or any article useful in com-

Adulterat-
ing food,
drugs,
liquors, etc.

pounding them, with a fraudulent intent to offer the same or cause or permit it to be offered for sale as unadulterated or undiluted, and every person who fraudulently sells, or keeps or offers for sale the same, as unadulterated or undiluted, is guilty of a misdemeanor.

Disposing
of tainted
food, etc.

383. Every person who knowingly sells, or keeps or offers for sale, or otherwise disposes of any article of food, drink, drug, or medicine, knowing that the same has become tainted, decayed, spoiled, or otherwise unwholesome or unfit to be eaten or drank, with intent to permit the same to be eaten or drank, is guilty of a misdemeanor.

Setting
woods on
fire.

384. Every person who willfully or negligently sets on fire, or causes or procures to be set on fire, any woods, prairies, grasses, or grain, on any lands, is guilty of a misdemeanor.

NOTE.—Stats. 1871-2, p. 96.

An Act to prevent the destruction of forests by fire on public lands.

[Approved February 13, 1872.]

[Enacting clause.]

SECTION 1. Any person or persons who shall willfully and deliberately set fire to any wooded country or forest belonging to this State or the United States, within this State, or to any place from which fire shall be communicated to any such wooded country or forest, or who shall accidentally set fire to any such wooded country or forest, or to any place from which fire shall be communicated to any such wooded country or forest, and shall not extinguish the same, or use every effort to that end, or who shall build any fire, for lawful purpose or otherwise, in or near any such wooded country or forest, and through carelessness or neglect shall permit said fire to extend to and burn through such wooded country or forest, shall be deemed guilty of a misdemeanor, and on conviction, before a Court of competent jurisdiction, shall be punishable by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or by both such fine and imprisonment; *provided*, that nothing herein contained shall apply to any person who in

good faith shall set a back fire to prevent the extension of a fire already burning. All fines collected under this Act shall be paid into the County Treasury for the benefit of the Common School Fund of the county in which they are collected.

385. Every person who, at the burning of a building, disobeys the lawful orders of any public officer or fireman, or offers any resistance to or interference with the lawful efforts of any fireman or company of firemen to extinguish the same, or engages in any disorderly conduct calculated to prevent the same from being extinguished, or who forbids, prevents, or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor.

Obstructing attempts to extinguish fires.

386. Every person who demands or receives compensation for the use of any bridge or ferry, or sets up or keeps any road, bridge, ferry, or constructed ford for the purpose of receiving any remuneration for the use of the same, without authority of law, is guilty of a misdemeanor.

Maintaining bridge or ferry without authority.

387. Every person who, having entered into an undertaking to keep and attend a ferry, violates the conditions of such undertaking, is guilty of a misdemeanor.

Violating condition of undertaking to keep ferry.

388. Every person who willfully rides or drives faster than a walk on or over any toll bridge, lawfully licensed, is punishable by fine not exceeding twenty dollars.

Riding or driving faster than a walk on toll bridges

389. Every person not exempt from paying tolls, who crosses on any ferry or toll bridge, or passes through any toll gate, lawfully kept, without paying the toll therefor, and with intent to avoid such payment, is punishable by fine not exceeding twenty dollars.

Crossing bridge, etc., without paying toll.

Engineer of locomotive engine omitting to ring bell when crossing highway.

390. Every person in charge of a locomotive engine who, before crossing any traveled public way, omits to cause a bell to ring or steam whistle to sound at the distance of at least eighty rods from the crossing, and up to it, is guilty of a misdemeanor.

Intoxication of engineers, conductors, or drivers of locomotives or cars.

391. Every person who is intoxicated while in charge of a locomotive engine, or while acting as conductor or driver upon any railroad train or car, whether propelled by steam or drawn by horses, or while acting as train dispatcher or as telegraph operator, receiving or transmitting dispatches in relation to the movement of trains, is guilty of a misdemeanor.

NOTE.—See Political Code Cal., Secs. 2920-2933. This section was amended so as to read as published in the text, by Act of April 1st, 1872: "An Act to amend and in relation to the Political, Civil, and Penal Codes, and the Code of Civil Procedure," now on file in the office of the Secretary of State.

Placing passenger cars in front of freight cars.

392. Every person who, in making up or running railroad trains, places or runs, or causes to be placed or run, any freight car in the rear of passenger cars, is guilty of a misdemeanor, and if loss of life or limb results from such placing or running, is guilty of felony. The term "freight car," as used in this section, does not include a baggage, express, or mail car.

NOTE.—This section was amended so as to read as published in the text, by Act of April 1st, 1872: "An Act to amend and in relation to the Political, Civil, and Penal Codes, and the Code of Civil Procedure," now on file in the office of the Secretary of State.

Violation of duty by employes of railroad companies.

393. Every engineer, conductor, brakeman, switch-tender, or other officer, agent, or servant of any railroad company, who is guilty of any willful violation or omission of his duty as such officer, agent, or servant, whereby human life or safety is endangered, the punishment of which is not otherwise prescribed, is guilty of a misdemeanor.

394. Every person who willfully exposes himself or another afflicted with any contagious or infectious disease, in any public place or thoroughfare, except in his necessary removal in a manner the least dangerous to the public health, is guilty of a misdemeanor.

Exposing person infected with any contagious disease in a public place.

395. Every person who willfully makes or publishes any false statement, spreads any false rumor, or employs any other false or fraudulent means or device, with intent to affect the market price of any kind of property, is guilty of a misdemeanor.

Frauds practiced to affect the market price.

396. Every person driving any conveyance drawn by horses, upon any public road or way, who causes or suffers his horses to run, with intent to pass another conveyance, or to prevent such other from passing his own, is guilty of a misdemeanor.

Racing upon highways.

397. Every person who sells or furnishes, or causes to be sold or furnished, intoxicating liquors to any Indian, is guilty of a misdemeanor.

Selling liquor to Indians.

NOTE.—Stats. 1871-2, p. 231.

An Act to prevent the sale of intoxicating drinks to minors.

[Approved March 4, 1872.]

[Enacting clause.]

SECTION 1. Every person who sells or gives to another under the age of sixteen years, to be by him drunk at the time as a beverage, any intoxicating drink, is guilty of a misdemeanor, and punishable by a fine not exceeding one hundred dollars, or by imprisonment in the County Jail not exceeding three months; *provided*, that nothing in this Act shall be deemed to apply to parents of such children or guardians of their wards or physicians.

398. Every person who sells or furnishes to any Indian any firearm, or ammunition therefor, is guilty of a misdemeanor.

Selling firearms and ammunition to Indians.

Death from
mischiev-
ous animals

399. If the owner of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and such animal, while so at large, or while not kept with ordinary care, kills any human being who has taken all the precautions which the circumstances permitted, or which a reasonable person would ordinarily take in the same situation, is guilty of a felony.

TITLE XI.

OF CRIMES AGAINST THE PUBLIC PEACE.

SECTION 403. Disturbance of public meetings, other than religious or political.

404. "Riot" defined.

405. Riot, punishment of.

406. "Rout" defined.

407. "Unlawful assembly" defined.

408. Punishment of rout and unlawful assembly.

409. Remaining present at place of riot, etc., after warning to disperse.

410. Magistrates neglecting or refusing to disperse rioters.

411. Consequence of resisting process after a county has been declared in a state of insurrection.

412. Prize fights.

413. Persons present at prize fights.

414. Leaving the State to engage in prize fights.

415. Disturbing the peace in night time.

416. Refusing to disperse upon lawful command.

417. Exhibiting deadly weapon in rude, etc., manner, or using the same unlawfully.

418. Forcible entry and detainer.

419. Returning to take possession of lands after being removed by legal proceedings.

Disturb-
ance of
public
meetings,
other than
religious
or political.

403. Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting, not unlawful in its character, other than such as is mentioned in Sections 59 and 302, is guilty of a misdemeanor.

404. Any use of force or violence, disturbing the public peace, or any threat to use such force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot.

"Riot" defined.

405. Every person who participates in any riot is punishable by imprisonment in the County Jail not exceeding two years, or by fine not exceeding two thousand dollars, or both.

Riot, punishment of.

406. (§ 116.) Whenever two or more persons, assembled and acting together, make any attempt or advance toward the commission of an act which would be a riot if actually committed, such assembly is a rout.

"Rout" defined.

407. (§ 115.) Whenever two or more persons assemble together to do an unlawful act, and separate without doing or advancing toward it, or do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly.

"Unlawful assembly" defined.

408. (§§ 115, 116.) Every person who participates in any rout or unlawful assembly is guilty of a misdemeanor.

Punishment of rout and unlawful assembly.

409. Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

Remaining present at place of riot, etc., after warning to disperse.

410. If a magistrate or officer, having notice of an unlawful or riotous assembly, mentioned in this Chapter, neglects to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

Magistrates neglecting or refusing to disperse rioters.

Consequence of resisting process after a county has been declared in a state of insurrection.

411. A person who, after the publication of the proclamation authorized by Section 732, resists or aids in resisting the execution of process in any county declared to be in a state of insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists or aids in resisting any force ordered out by the Governor to quell or suppress an insurrection, is punishable by imprisonment in the State Prison not less than two years.

Prize fights.

412. (§ 44.) Every person who engages in, instigates, encourages, or promotes any ring or prize fight, or any other premeditated fight or contention (without deadly weapons), either as principal, aid, second, umpire, surgeon, or otherwise, is punishable by imprisonment in the State Prison not exceeding two years.

Persons present at prize fights.

413. (§ 44.) Every person willfully present as a spectator at any fight or contention mentioned in the preceding section, is guilty of a misdemeanor.

Leaving the State to engage in prize fights.

414. Every person who leaves this State with intent to evade any of the provisions of the last two sections, and to commit any act out of this State such as is prohibited by them, and who does any act which would be punishable under these provisions if committed within this State, is punishable in the same manner as he would have been in case such act had been committed within this State.

Disturbing the peace in night time.

415. (§ 112.) Every person who maliciously and willfully disturbs the peace or quiet of any neighborhood, family, or person, by loud or unusual noise, or by tumultuous or offensive conduct, or by threatening, traducing, quarrelling, challenging to fight, or fighting, is punishable by fine not exceeding two hundred dol-

lars, or by imprisonment in the County Jail not exceeding two months.

416. (§ 113.) If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do by a public officer, the persons so offending are severally guilty of a misdemeanor.

Refusing to disperse upon lawful command.

417. Every person who, not in necessary self-defense, in the presence of two or more persons, draws or exhibits any deadly weapon in a rude, angry, and threatening manner, or who, in any manner, unlawfully uses the same, in any fight or quarrel, is guilty of a misdemeanor.

Exhibiting deadly weapon in rude, etc., manner, or using the same unlawfully.

418. Every person using or procuring, encouraging or assisting another to use, any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and in the manner allowed by law, is guilty of a misdemeanor.

Forceful entry and detainer.

419. Every person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any Court, tribunal, or officer, and who afterwards unlawfully returns to settle, reside upon, or take possession of such lands, is guilty of a misdemeanor.

Returning to take possession of lands after being removed by legal proceedings.

TITLE XII.

OF CRIMES AGAINST THE REVENUE AND PROPERTY OF THIS STATE.

SECTION 424. Embezzlement and falsification of accounts by public officers.

425. Officers neglecting to pay over public moneys.

426. "Public moneys," as used in the preceding section, defined.

SECTION 427. Failure to pay over fines and forfeitures received, a misdemeanor.

428. Obstructing officer in collecting revenue.

429. Refusing to give Assessor list of property, or giving false name.

430. Making false statements, not under oath, in reference to taxes.

431. Delivering receipts for poll taxes, other than prescribed by law, or collecting poll taxes, etc., without giving the receipt prescribed by law.

432. Having blank receipts for licenses, etc., other than those prescribed by law.

433. *Repealed.*

434. Refusing to give name of persons in employment, etc.

435. Carrying on business without license.

436. Unlawfully acting as auctioneer.

437. *Repealed.*

438. *Repealed.*

439. Effecting insurance on account of foreign companies that have not complied with the laws of this State.

440. Officer charged with collection, etc., of revenue, refusing to permit inspection of his books.

441. Board of Examiners, Controller, and Treasurer neglecting certain duties.

442. Having State arms, etc.

443. Selling State arms, etc.

Embezzlement and falsification of accounts by public officers.

424. (§§ 66, 67.) Every officer of this State, or of any county, city, town, or district of this State, and every other person charged with the receipt, safe keeping, transfer, or disbursement of public moneys, who either :

1. Without authority of law, appropriates the same or any portion thereof to his own use, or to the use of another; or,

2. Loans the same or any portion thereof; or,

3. Fails to keep the same in his possession until disbursed or paid out by authority of law; or,

4. Unlawfully deposits the same or any portion thereof in any bank, or with any banker or other person; or,

5. Changes or converts any portion thereof from coin into currency, or from currency into coin or other currency, without authority of law; or,

6. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,

7. Fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or,

8. Willfully refuses or omits to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order, or warrant drawn upon such moneys by competent authority; or,

9. Willfully omits to transfer the same, when such transfer is required by law; or,

10. Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same, any money received by him under any duty imposed by law so to pay over the same;

—Is punishable by imprisonment in the State Prison for not less than one nor more than ten years, and is disqualified from holding any office in this State.

425. Every officer charged with the receipt, safe keeping, or disbursement of public moneys, who neglects or fails to keep and pay over the same in the manner prescribed by law, is guilty of felony.

Officers neglecting to pay over public moneys.

426. The phrase "public moneys," as used in the two preceding sections, includes all bonds and evidence of indebtedness, and all moneys belonging to the State, or any city, county, town, or district therein, and all moneys, bonds, and evidences of indebtedness received or held by State, county, district, city, or town officers in their official capacity.

"Public moneys," as used in the preceding section, defined.

427. If any Clerk, Justice of the Peace, Sheriff, or Constable, who receives any fine or forfeiture, refuses or neglects to pay over the same according to law and within thirty days after the receipt thereof, he is guilty of a misdemeanor.

Failure to pay over fines and forfeitures received, a misdemeanor.

Obstruct-
ing officer
in collect-
ing revenue

428. Every person who willfully obstructs or hinders any public officer from collecting any revenue, taxes, or other sums of money in which the people of this State are interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor.

Refusing
to give
Assessor
list of
property,
or giving
false name.

429. Every person who unlawfully refuses, upon demand, to give to any County Assessor a list of his property subject to taxation, or to swear to such list, or who gives a false name or fraudulently refuses to give his true name to any Assessor, when demanded by such Assessor in the discharge of his official duties, is guilty of a misdemeanor.

Making
false
statements,
not under
oath, in
reference
to taxes.

430. Every person who, in making any statement, not upon oath, oral or written, which is required or authorized by law to be made, as the basis of imposing any tax or assessment, or of an application to reduce any tax or assessment, willfully states anything which he knows to be false, is guilty of a misdemeanor.

Delivering
receipts for
poll taxes,
other than
prescribed
by law, or
collecting
poll taxes,
etc.,
without
giving the
receipt
prescribed
by law.

431. Every person who uses or gives any receipt, except that prescribed by law, as evidence of the payment of any poll tax, road tax, or license of any kind, or who receives payment of such tax or license without delivering the receipt prescribed by law, or who inserts the name of more than one person therein, is guilty of a misdemeanor.

Having
blank
receipts for
licenses,
etc., other
than those
prescribed
by law.

432. Every person who has in his possession, with intent to circulate or sell, any blank licenses or poll tax receipts other than those furnished by the Controller of State or County Auditor, is guilty of felony.

Repealed.

433. [Was repealed by an Act entitled "An Act to amend and in relation to THE POLITICAL, CIVIL, and PENAL CODES, and THE CODE OF CIVIL PROCEDURE," approved April first, eighteen hundred and seventy-

two, now on file in the office of the Secretary of State.]

434. Every person who, when requested by the Collector of taxes or licenses, refuses to give to such Collector the name and residence of each man in his employment, or to give such Collector access to the building or place where such men are employed, is guilty of a misdemeanor.

Refusing to give name of persons in employment, etc.

435. Every person who commences or carries on any business, trade, profession, or calling, for the transaction or carrying on of which a license is required by any law of this State, without taking out or procuring the license prescribed by such law, is guilty of a misdemeanor.

Carrying on business without license.

436. Every person who acts as an auctioneer in violation of the laws of this State relating to auctions and auctioneers, is guilty of a misdemeanor.

Unlawfully acting as auctioneer.

437. [Repealed by Act of April first, eighteen hundred and seventy-two, cited in note in lieu of Section 433, ante.]

Repealed.

438. [Repealed by Act of April first, eighteen hundred and seventy-two, cited in note in lieu of Section 433, ante.]

Repealed.

439. Every person who in this State procures, or agrees to procure, any insurance for a resident of this State, from any insurance company not incorporated under the laws of this State, unless such company or its agent has filed the bond required by the laws of this State relating to insurance, is guilty of a misdemeanor.

Effecting insurance on account of foreign companies that have not complied with the laws of this State.

Officer
charged
with
collection,
etc., of
revenue,
refusing
to permit
inspection
of his
books.

440. Every officer charged with the collection, receipt, or disbursement of any portion of the revenue of this State, who, upon demand, fails or refuses to permit the Controller or Attorney General to inspect his books, papers, receipts, and records pertaining to his office, is guilty of a misdemeanor.

Board of
Examiners,
Controller,
and
Treasurer
neglecting
certain
duties.

441. Every member of the Board of Examiners and every Controller or State Treasurer who violates any of the provisions of the laws of this State relating to the Board of Examiners, or prescribing its powers and duties, is guilty of a felony.

Having
State arms,
etc.

442. Every person who unlawfully retains in his possession any arms, equipments, clothing, or military stores belonging to the State, or the property of any company of the State militia, is guilty of a misdemeanor.

Selling
State arms,
etc.

443. Every member of the State militia who unlawfully disposes of any arms, equipments, clothing, or military stores, the property of this State, or of any company of the State militia, is guilty of a misdemeanor.

TITLE XIII.

OF CRIMES AGAINST PROPERTY.

CHAPTER I. *Arson.*

II. *Burglary and housebreaking.*

III. *Having possession of burglarious instruments and deadly weapons.*

IV. *Forgery and counterfeiting.*

V. *Larceny.*

VI. *Embezzlement.*

CHAPTER VII. *Extortion.*

VIII. *False personation and cheats.*

IX. *Fraudulently fitting out and destroying vessels.*

X. *Fraudulently keeping possession of wrecked property.*

XI. *Fraudulent destruction of property insured.*

XII. *False weights and measures.*

XIII. *Fraudulent insolvencies by corporations, and other frauds in their management.*

XIV. *Fraudulent issue of documents of title to merchandise.*

XV. *Malicious injuries to railroad bridges, highways, bridges, and telegraphs.*

CHAPTER I.

ARSON.

SECTION 447. Arson defined.

448. "Building" defined.

449. "Inhabited building" defined.

450. "Night time" defined.

451. "Burning" defined.

452. Ownership of the building.

453. Degrees of arson.

454. Arson of the first degree. Arson of the second degree.

455. Punishment of arson.

447. Arson is the willful and malicious burning of a building, with intent to destroy it. Arson defined.

448. Any house, edifice, structure, vessel, or other erection, capable of affording shelter for human beings, or appurtenant to or connected with an erection so adapted, is a "building," within the meaning of this Chapter. "Building" defined.

"Inhabited building" defined.

449. Any building which has usually been occupied by any person lodging therein at night is an "inhabited building," within the meaning of this Chapter.

"Night time" defined.

450. The phrase "night time," as used in this Chapter, means the period between sunset and sunrise.

"Burning" defined.

451. To constitute a burning, within the meaning of this Chapter, it is not necessary that the building set on fire should have been destroyed. It is sufficient that fire is applied so as to take effect upon any part of the substance of the building.

Ownership of the building.

452. To constitute arson it is not necessary that a person other than the accused should have had ownership in the building set on fire. It is sufficient that at the time of the burning another person was rightfully in possession of, or was actually occupying such building, or any part thereof.

Degrees of arson.

453. Arson is divided into two degrees.

Arson of the first degree.

454. Maliciously burning in the night-time an inhabited building in which there is at the time some human being, is arson in the first degree. All other kinds of arson are of the second degree.

Arson of the second degree.

Punishment of arson.

455. Arson is punishable by imprisonment in the State Prison, as follows:

1. Arson in the first degree, for not less than two years.

2. Arson in the second degree, for not less than one nor more than ten years.

CHAPTER II.

BURGLARY AND HOUSEBREAKING.

SECTION 459. "Burglary" defined.

460. Punishment of burglary.

461. "Housebreaking" defined.

462. Punishment of housebreaking.

463. "Night-time" defined.

459. (§ 58.) Every person who, in the night-time, forcibly breaks and enters, or without force enters through any open door, window, or other aperture, any house, room, apartment, or tenement, or any tent, vessel, water craft, or railroad car, with intent to commit grand or petit larceny, or any felony, is guilty of burglary. "Burglary" defined.

460. Burglary is punishable by imprisonment in the State Prison for not less than one nor more than fifteen years. Punishment of burglary.

461. (§ 127.) Every person who, in the day-time, enters any dwelling house, shop, warehouse, store, mill, barn, stable, outhouse, other building, vessel, or railroad car, with intent to steal or to commit any felony whatever therein, is guilty of housebreaking. "House-breaking" defined.

462. Housebreaking is punishable by imprisonment in the State Prison for not less than one nor more than five years. Punishment of house-breaking.

463. The phrase "night-time," as used in this Chapter, means the period between sunset and sunrise. "Night time" defined.

CHAPTER III.

HAVING POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS.

SECTION 466. Having possession of any instrument with intent to commit burglary.

467. Having possession of deadly weapons with intent to commit an assault.

Having possession of any instrument with intent to commit burglary.

466. (§ 127.) Every person having upon him a picklock, crow key, bit, other instrument or tool, with intent feloniously to break or enter into any building, is guilty of a misdemeanor.

Having possession of deadly weapons with intent to commit an assault.

467. (§ 127.) Every person having upon him any deadly weapon with intent to assault another, is guilty of a misdemeanor.

CHAPTER IV.

FORGERY AND COUNTERFEITING.

SECTION 470. Forgery of wills, conveyances, notes, bonds, etc. Uttering forged notes, bonds, etc. Forgery of records and official returns.

471. Making false entries in records or returns.

472. Forgery of public and corporate seals.

473. Punishment of forgery.

474. Forging telegraphic messages.

475. Passing or receiving forged notes.

476. Making, passing, or uttering fictitious bills, etc.

477. Counterfeiting coin, bullion, etc.

478. Punishment of counterfeiting.

479. Possessing or receiving counterfeit coin, bullion, etc.

480. Making or possessing counterfeit dies or plates.

Forgery of wills, conveyances, notes, bonds, etc.

470. (§ 73.) Every person who, with intent to defraud another, falsely makes, alters, forges, or counterfeits any charter, letters, patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post note,

check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, passage ticket, power of attorney, or any certificate of any share, right, or interest in the stock of any corporation or association, or any Controller's warrant for the payment of money at the Treasury, county order or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release, or receipt for money or goods, or any acquittance, release, or discharge for any debt, account, suit, action, demand, or other thing, real or personal, or any transfer or assurance of money, certificates of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands, or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft, order, or assignment of any bond, writing obligatory, or promissory note for money or other property, or counterfeits or forges the seal or handwriting of another; or utters, publishes, passes, or attempts to pass, as true and genuine, any of the above named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage, or defraud any person; or who, with intent to defraud, alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a Court, or the return of any officer to any process of any Court, is guilty of forgery.

Uttering
forged
notes,
bonds, etc.

Forgery of
records
and official
returns.

**Making
false
entries in
records or
returns.**

471. (§ 73.) Every person who, with intent to defraud another, makes, forges, or alters any entry in any book of records, or any instrument purporting to be any record or return specified in the preceding section, is guilty of forgery.

**Forgery of
public and
corporate
seals.**

472. Every person who, with intent to defraud another, forges, or counterfeits the seal of this State, the seal of any public officer authorized by law, the seal of any Court of record, or the seal of any corporation, or any other public seal authorized or recognized by the laws of this State, or of any other State, Government, or country, or who falsely makes, forges, or counterfeits any impression purporting to be an impression of any such seal, or who has in his possession any such counterfeited seal or impression thereof, knowing it to be counterfeited, and willfully conceals the same, is guilty of forgery.

**Punish-
ment of
forgery.**

473. (§ 73.) Forgery is punishable by imprisonment in the State Prison for not less than one nor more than fourteen years.

**Forging
telegraphic
messages.**

474. Every person who knowingly and willfully sends by telegraph to any person a false or forged message, purporting to be from such telegraph office, or from any other person, or who willfully delivers, or causes to be delivered to any person any such message falsely purporting to have been received by telegraph, or who furnishes or conspires to furnish, or causes to be furnished to any agent, operator, or employé, to be sent by telegraph, or to be delivered, any such message, knowing the same to be false or forged, with the intent to deceive, injure, or defraud another, is punishable by imprisonment in the State Prison not exceeding five years, or in the County Jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment.

475. (§ 76.) Every person who has in his possession, or receives from another person, any forged promissory note or bank bill, or bills, for the payment of money or property, with the intention to pass the same, or to permit, cause, or procure the same to be uttered or passed, with the intention to defraud any person, knowing the same to be forged or counterfeited, or has or keeps in his possession any blank or unfinished note or bank bill made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause, or procure the same to be filled up and completed in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered or passed, to defraud any person, is punishable by imprisonment in the State Prison for not less than one nor more than fourteen years.

Passing or
receiving
forged
notes.

476. (§ 77.) Every person who makes, passes, utters, or publishes, with intention to defraud any other person, or who, with the like intention, attempts to pass, utter, or publish, or who has in his possession, with like intent to utter, pass, or publish, any fictitious bill, note, or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of some bank, corporation, copartnership, or individual, when, in fact, there is no such bank, corporation, copartnership, or individual in existence, knowing the bill, note, check, or instrument in writing to be fictitious, is punishable by imprisonment in the State Prison for not less than one nor more than fourteen years.

Making,
passing, or
uttering
fictitious
bills, etc.

477. (§ 74.) Every person who counterfeits any of the species of gold or silver coin current in this State, or any kind or species of gold dust, gold or sil-

Counter-
feiting
coin,
bullion,
etc.

ver bullion, or bars, lumps, pieces, or nuggets, or who sells, passes, or gives in payment such counterfeit coin, dust, bullion, bars, lumps, pieces, or nuggets, or permits, causes, or procures the same to be sold, uttered, or passed, with intention to defraud any person, knowing the same to be counterfeited, is guilty of counterfeiting.

Punish-
ment of
counter-
feiting.

478. (§§ 76, 77.) Counterfeiting is punishable by imprisonment in the State Prison for not less than one nor more than fourteen years.

Possessing
or receiving
counterfeit
coin, bul-
lion, etc.

479. (§ 75.) Every person who has in his possession, or receives for any other person, any counterfeit gold or silver coin of the species current in this State, or any counterfeit gold dust, gold or silver bullion or bars, lumps, pieces, or nuggets, with the intention to sell, utter, put off, or pass the same, or permits, causes, or procures the same to be sold, uttered, or passed, with intention to defraud any person, knowing the same to be counterfeit, is punishable by imprisonment in the State Prison not less than one nor more than fourteen years.

Making or
possessing
counterfeit
dies or
plates.

480. (§ 78.) Every person who makes, or knowingly has in his possession any die, plate, or any apparatus, paper, metal, machine, or other thing whatever, made use of in counterfeiting coin current in this State, or in counterfeiting gold dust, gold or silver bars, bullion, lumps, pieces, or nuggets, or in counterfeiting bank notes or bills, is punishable by imprisonment in the State Prison not less than one nor more than fourteen years; and all such dies, plates, apparatus, paper, metal, or machine, intended for the purpose aforesaid, must be destroyed.

CHAPTER V.

LARCENY.

SECTION 484. "Larceny" defined.

- 485. Larceny of lost property.
- 486. Grand and petit larceny.
- 487. Grand larceny defined.
- 488. Petit larceny.
- 489. Punishment of grand larceny.
- 490. Punishment of petit larceny.
- 491. Dogs property.
- 492. Larceny of written instruments.
- 493. Value of passage tickets.
- 494. Written instruments completed but not delivered.
- 495. Severing and removing part of the realty declared larceny.
- 496. Receiver of stolen property.
- 497. Larceny committed and stolen property received out of this State.
- 498. Stealing gas.
- 499. Stealing water.
- 500. Larceny of goods saved from fire in San Francisco.
- 501. Purchasing or receiving in pledge junk, etc., of minors, misdemeanor.
- 502. Applies Sections 339, 342, and 343 to junk dealers, etc.

484. (§§ 60, 61.) Larceny is the felonious stealing, taking, carrying, leading, or driving away the personal property of another. "Larceny" defined.

NOTE.—Stats. 1871-2, p. 282.

An Act to more fully define the crime of larceny.

[Approved March 6, 1872.]

[Enacting clause.]

SECTION 1. Every person who shall convert any manner of real estate, of the value of fifty dollars and upwards, into personal property, by severing the same from the realty of another, with felonious intent to and shall so steal, take, and carry away the same, shall be deemed guilty of grand larceny, and, upon conviction thereof, shall be punishable by imprisonment in the State Prison for any term not less than one year nor more than fourteen years.

SEC. 2. Every person who shall convert any manner of real estate, of the value of under fifty dollars, into personal property, by severing the same from the realty

of another, with felonious intent to and shall so steal, take, and carry away the same, shall be deemed guilty of petit larceny, and, upon conviction thereof, shall be punishable by imprisonment in the County Jail for a period not more than one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Stats. 1871-2, p. 435.

An Act supplementary to an Act entitled "An Act concerning crimes and punishments," passed April sixteenth, eighteen hundred and fifty.

[Approved March 20, 1872.]

[Enacting clause.]

SECTION 1. Every person who shall feloniously steal, take, and carry away, or attempt to take, steal, and carry from any mining claim, tunnel, sluice, undercurrent, riffle box, or sulphurate machine, any gold dust, amalgam, or quicksilver, the property of another, shall be deemed guilty of grand larceny, and, upon conviction thereof, shall be punished by imprisonment in the State Prison for any term of not less than one year nor more than fourteen years.

SEC. 2. This Act shall be in force from and after its passage.

Larceny
of lost
property.

485. One who finds lost property under circumstances which give him knowledge of or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person not entitled thereto, without first making reasonable and just efforts to find the owner and restore the property to him, is guilty of larceny.

Grand
and petit
larceny.

486. (§§ 60, 61.) Larceny is divided into two degrees, the first of which is termed grand larceny; the second, petit larceny.

Grand
larceny
defined.

487. (§ 60.) Grand larceny is larceny committed in either of the following cases:

1. When the property taken is of a value exceeding fifty dollars.
2. When the property is taken from the person of another.

3. When the property taken is a horse, mare, gelding, cow, steer, bull, calf, mule, jack, jenny, goat, sheep, or hog.

488. (§ 61.) Larceny in other cases is petit larceny. Petit larceny.

489. Grand larceny is punishable by imprisonment in the State Prison for not less than one nor more than ten years. Punishment of grand larceny.

490. Petit larceny is punishable by fine not exceeding five hundred dollars, or by imprisonment in the County Jail not exceeding six months, or both. Punishment of petit larceny.

491. Dogs are property, and of the value of one dollar each, within the meaning of the terms "property" and "value," as used in this Chapter. Dogs property.

492. (§ 62.) If the thing stolen consists of any evidence of debt, or other written instrument, the amount of money due thereupon, or secured to be paid thereby, and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, is the value of the thing stolen. Larceny of written instruments.

493. If the thing stolen is any ticket or other paper or writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad or vessel or other public conveyance, the price at which tickets entitling a person to a like passage are usually sold by the proprietors of such conveyance is the value of such ticket, paper, or writing. Value of passage tickets.

494. All the provisions of this Chapter apply where the property taken is an instrument for the payment of money, evidence of debt, public security, or passage ticket, completed and ready to be issued or Written instruments completed but not delivered.

delivered, although the same has never been issued or delivered by the makers thereof to any person as a purchaser or owner.

Severing
and
removing
part of
the realty
declared
larceny.

495. The provisions of this Chapter apply where the thing taken is any fixture or part of the realty, and is severed at the time of the taking, in the same manner as if the thing had been severed by another person at some previous time.

Receiver
of stolen
property.

496. Every person who, for his own gain, or to prevent the owner from again possessing his property, buys or receives any personal property, knowing the same to have been stolen, is punishable by imprisonment in the State Prison not exceeding five years, or in the County Jail not exceeding six months, or by both.

Larceny
committed
and stolen
property
received
out of
this State.

497. Every person who, in another State or country, steals the property of another, or receives such property knowing it to have been stolen, and brings the same into this State, may be convicted and punished in the same manner as if such larceny or receiving had been committed in this State.

Stealing
gas.

498. Every person who, with intent to injure or defraud, makes or causes to be made any pipe, tube, or other instrument, and connects the same, or causes it to be connected, with any main, service pipe, or other pipe for conducting or supplying illuminating gas, in such manner as to supply illuminating gas to any burner or orifice, by or at which illuminating gas is consumed, around or without passing through the meter provided for the measuring and registering the quantity consumed, or in any other manner so as to evade payment therefor, and every person who, with like intent, injures or alters any gas meter or obstructs its action, is guilty of a misdemeanor.

499. Every person who, with intent to injure or defraud, connects or causes to be connected, any pipe, tube, or other instrument, with any main, service pipe, or other pipe, or conduit or flume for conducting water, for the purpose of taking water from such main, service pipe, conduit or flume, without the knowledge of the owner thereof, and with intent to evade payment therefor, is guilty of a misdemeanor.

Stealing
water.

500. Every person who, in the City and County of San Francisco, saves from fire or from a building endangered by fire, any property, and for two days thereafter corruptly neglects to notify the owner or Fire Marshal thereof, is punishable by imprisonment in the State Prison for not less than one nor more than ten years.

Larceny of
goods saved
from fire
in San
Francisco.

501. Every person who purchases or receives in pledge or by way of mortgage, from any person under the age of sixteen years, any junk, metal, mechanical tools, or implements, is guilty of a misdemeanor.

Purchasing
or receiving
in pledge
junk, etc.,
of minors,
misdemeanor.

502. Sections 339, 342, and 343 of THE PENAL CODE are applicable to persons carrying on the business of junk dealers, and apply to their transactions of purchase and sale, as well as to those of pledge or mortgage.

Applies
Sections
339, 342,
and 343
to junk
dealers, etc.

CHAPTER VI.

EMBEZZLEMENT.

SECTION 503. "Embezzlement" defined.

504. When officer, etc., of any association, guilty of embezzlement.

505. When carrier or other person having property for transportation, for hire, guilty of embezzlement.

506. When trustee, banker, etc., guilty of embezzlement.

507. When bailee, tenant, or lodger guilty of embezzlement.

508. When clerk, agent, or servant guilty of embezzlement.

SECTION 500. Distinct act of taking.

510. Evidence of debt undelivered may be subject of embezzlement.

511. Claim of title a ground of defense.

512. Intent to restore the property is no defense.

513. But actual restoration is a ground for mitigation of punishment.]

514. Punishment for embezzlement.

"Embezzlement" defined.

503. Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted.

When officer, etc., of any association, guilty of embezzlement.

504. Every officer, Director, Trustee, clerk, servant, or agent of any association, society, or corporation (public or private), who fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control by virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

When carrier or other person having property for transportation, for hire, guilty of embezzlement.

505. Every carrier or other person having under his control personal property for the purpose of transportation for hire, who fraudulently appropriates it to any use or purpose inconsistent with the safe keeping of such property and its transportation according to his trust, is guilty of embezzlement, whether he has broken the package in which such property is contained, or has otherwise separated the items thereof, or not.

When trustee, banker, etc., guilty of embezzlement.

506. Every trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator, or collector, or person otherwise intrusted with or having in his control property for the use of any other person, who fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

507. Every person intrusted with any property as bailee, tenant, or lodger, or with any power of attorney for the sale or transfer thereof, who fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert to his own use, is guilty of embezzlement.

When bailee, tenant, or lodger guilty of embezzlement.

508. Every clerk, agent, or servant of any person who fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to his own use, any property of another which has come into his control or care by virtue of his employment as such clerk, agent, or servant, is guilty of embezzlement.

When clerk, agent, or servant guilty of embezzlement.

509. A distinct act of taking is not necessary to constitute embezzlement.

Distinct act of taking.

510. Any evidence of debt, negotiable by delivery only, and actually executed, is the subject of embezzlement, whether it has been delivered or issued as a valid instrument or not.

Evidence of debt undelivered may be subject of embezzlement.

511. Upon any indictment for embezzlement, it is a sufficient defense that the property was appropriated openly and avowedly, and under a claim of title preferred in good faith, even though such claim is untenable. But this provision does not excuse the unlawful retention of the property of another to offset or pay demands held against him.

Claim of title a ground of defense.

512. The fact that the accused intended to restore the property embezzled, is no ground of defense or of mitigation of punishment, if it has not been restored before an information has been laid before a magistrate, charging the commission of the offense.

Intent to restore the property is no defense.

513. Whenever, prior to any information laid before a magistrate, charging the commission of embezzlement, the person accused voluntarily and actually

But actual restoration is a ground for mitigation of punishment.

restored or tendered restoration of the property alleged to have been embezzled, or any part thereof, such fact is not a ground of defense, but it authorizes the Court to mitigate punishment, in its discretion.

Punish-
ment for
embezzle-
ment.

514. Every person guilty of embezzlement* is punishable in the manner prescribed for feloniously stealing property of the value of that embezzled; and where the property embezzled is an evidence of debt or right of action, the sum due upon it, or secured to be paid by it, shall be taken as its value.

CHAPTER VII.

EXTORTION.

SECTION 518. "Extortion" defined.

519. What threats may constitute extortion.

520. Punishment of extortion in certain cases.

521. Punishment of extortion committed under color of official right.

522. Obtaining signature by means of threats.

523. Sending threatening letters with intent to extort money, etc.

524. Attempts to extort money or property by means of verbal threats.

525. Officers of railroad companies making overcharges.

"Extor-
tion"
defined.

518. Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right.

What
threats
may
constitute
extortion.

519. Fear, such as will constitute extortion, may be induced by a threat, either:

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his, or member of his family; or,

2. To accuse him, or any relative of his, or member of his family, of any crime; or,

3. To expose, or impute to him or them any deformity or disgrace; or,

4. To expose any secret affecting him or them.

520. Every person who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force, or any threat, such as is mentioned in the preceding section, is punishable by imprisonment in the State Prison not exceeding five years.

Punishment of extortion in certain cases.

521. Every person who commits any extortion under color of official right, in cases for which a different punishment is not prescribed in this Code, is guilty of a misdemeanor.

Punishment of extortion committed under color of official right.

522. Every person who, by any extortionate means, obtains from another his signature to any paper or instrument, whereby, if such signature were freely given, any property would be transferred, or any debt, demand, charge, or right of action created, is punishable in the same manner as if the actual delivery of such debt, demand, charge, or right of action were obtained.

Obtaining signature by means of threats.

523. Every person who, with intent to extort any money or other property from another, sends or delivers to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat such as is specified in Section 519, is punishable in the same manner as if such money or property were actually obtained by means of such threat.

Sending threatening letters with intent to extort money, etc.

524. Every person who unsuccessfully attempts, by means of any verbal threat, such as is specified in Section 519, to extort money or other property from another, is guilty of a misdemeanor.

Attempts to extort money or property by means of verbal threats.

Officers
of railroad
companies
making
over-
charges.

525. Every officer, agent, or employé of a railroad company who asks or receives a greater sum than is allowed by law for the carriage of passengers or freight, is guilty of a misdemeanor.

CHAPTER VIII.

FALSE PERSONATION AND CHEATS.

SECTION 528. Marrying under false personation.

529. Falsely personating another in other cases.

530. Receiving property in a false character.

531. Fraudulent conveyances.

532. Obtaining money by false pretenses and by false reports of wealth, etc.

533. Selling land twice.

534. Married person selling lands under false representations.

535. Mock auction.

Marrying
under false
personation

528. (§ 90.) Every person who falsely personates another, and in such assumed character marries or pretends to marry, or to sustain the marriage relation towards another, with or without the connivance of such other, is guilty of a felony.

Falsely
personating
another in
other cases.

529. (§ 90.) Every person who falsely personates another, and in such assumed character, either:

1. Becomes bail or surety for any party in any proceeding whatever, before any Court or officer authorized to take such bail or surety; or,

2. Verifies, publishes, acknowledges, or proves, in the name of another person, any written instrument, with intent that the same may be recorded, delivered, and used as true; or,

3. Does any other act whereby, if it were done by the person falsely personated, he might, in any event, become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or

penalty, or whereby any benefit might accrue to the party personating, or to any other person;

—Is punishable by imprisonment in the County Jail not exceeding two years, or by fine not exceeding five thousand dollars.

530. (§ 91.) Every person who falsely personates another, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person, or to deprive the true owner thereof, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

Receiving
property in
a false
character.

531. (§ 129.) Every person who is a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment, or execution, contract or conveyance, had, made, or contrived with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands; or who, being a party as aforesaid, at any time wittingly and willingly puts in, uses, avows, maintains, justifies, or defends the same, or any of them, as true, and done, had, or made in good faith, or upon good consideration, or aliens, assigns, or sells any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned, to him or them conveyed as aforesaid, or any part thereof, is guilty of a misdemeanor.

Fraudulent
convey-
ances.

532. (§§ 130, 131.) Every person who knowingly and designedly, by false or fraudulent representation or pretenses, defrauds any other person of money or property, or who causes or procures others to report falsely of his wealth or mercantile character, and by thus imposing upon any person obtains credit, and

Obtaining
money by
false
pretenses
and by
false
reports of
wealth, etc.

thereby fraudulently gets into possession of money or property, is punishable by imprisonment in the County Jail, not exceeding one year, and by fine not exceeding three times the value of the money or property so obtained.

Selling
land twice.

533. (§ 132.) Every person who, after once selling, bartering, or disposing of any tract of land or town lot, or after executing any bond or agreement for the sale of any land or town lot, again willfully and with intent to defraud previous or subsequent purchasers, sells, barter, or disposes of the same tract of land or town lot, or any part thereof, or willfully and with intent to defraud previous or subsequent purchasers, executes any bond or agreement to sell, barter, or dispose of the same land or lot, or any part thereof, to any other person for a valuable consideration, is punishable by imprisonment in the State Prison not less than one nor more than ten years.

Married
person
selling
lands under
false repre-
sentations.

534. Every married person who falsely and fraudulently represents himself or herself as competent to sell or mortgage any real estate, to the validity of which sale or mortgage the assent or concurrence of his wife or her husband is necessary, and under such representations willfully conveys or mortgages the same, is guilty of felony.

Mock
auction.

535. Every person who obtains any money or property from another, or obtains the signature of another to any written instrument, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property, by auction, or by any of the practices known as mock auctions, is punishable by imprisonment in the State Prison not exceeding three years, or in the County Jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment; and, in addition thereto, forfeits any license

he may hold as auctioneer, and is forever disqualified from receiving a license to act as auctioneer within this State.

CHAPTER IX.

FRAUDULENTLY FITTING OUT AND DESTROYING VESSELS.

SECTION 539. Captain or other officer willfully destroying vessel, etc.

540. Other persons willfully destroying vessel, etc.

541. Making false manifest, etc.

539. Every captain or other officer or person in command or charge of any vessel, who, within this State, willfully wrecks, sinks, or otherwise injures or destroys such vessel, or any cargo in such vessel, or willfully permits the same to be wrecked, sunk, or otherwise injured or destroyed, with intent to prejudice or defraud any other person, is punishable by imprisonment in the State Prison not less than three years.

Captain or other officer willfully destroying vessel, etc.

540. Every person, other than such as are embraced within the last section, who is guilty of any act therein specified, is punishable by imprisonment in the State Prison for a term not exceeding ten years.

Other persons willfully destroying vessel, etc.

541. Every person guilty of preparing, making, or subscribing any false or fraudulent manifest, invoice, bill of lading, ship's register, or protest, with intent to defraud another, is punishable by imprisonment in the State Prison not exceeding three years.

Making false manifest, etc.

CHAPTER X.

FRAUDULENTLY KEEPING POSSESSION OF WRECKED PROPERTY.

SECTION 544. Detaining wrecked property after salvage paid.

545. Unlawfully taking or having possession of wrecked property.

Detaining
wrecked
property
after
salvage
paid.

544. Every person who keeps any wrecked property, or the proceeds thereof, after the salvage and expenses chargeable thereon have been agreed to or adjusted, and the amount thereof has been paid to him, is punishable by fine not exceeding one thousand dollars, or by imprisonment in the County Jail not exceeding one year, or both.

Unlawfully
taking or
having
possession
of wrecked
property.

545. Every person who takes away any goods from any stranded vessel, or any goods cast by the sea upon the land, or found in any bay or creek, or knowingly has in his possession any goods so taken or found, and does not deliver the same to the Sheriff of the county where they were found, or notify him of his readiness to do so within thirty days after the same have been taken by him, or have come into his possession, is guilty of a misdemeanor.

CHAPTER XI.

FRAUDULENT DESTRUCTION OF PROPERTY INSURED.

SECTION 548. Burning or destroying property insured.

549. Presenting false proofs in support of a claim upon policy of insurance.

Burning or
destroying
property
insured.

548. Every person who willfully burns, or in any other manner injures or destroys any property which is at the time insured against loss or damage by fire or by any other casualty, with intent to defraud or pre-

judice the insurer, whether the same be the property of or in possession of such person or of any other, is punishable by imprisonment in the State Prison not less than one nor more than ten years.

549. Every person who presents or causes to be presented any false or fraudulent claim, or any proof in support of any such claim, upon any contract of insurance for the payment of any loss, or who prepares, makes, or subscribes any account, certificate of survey, affidavit, or proof of loss, or other book, paper, or writing with intent to present or use the same, or to allow it to be presented or used in support of any such claim, is punishable by imprisonment in the State Prison not exceeding three years, or by a fine not exceeding one thousand dollars, or by both.

Presenting false proofs in support of a claim upon policy of insurance.

CHAPTER XII.

FALSE WEIGHTS AND MEASURES.

SECTION 552. "False weight" and "measure" defined.

553. Using false weights or measures.

554. Stamping false weight, measure, or tare on casks or packages.

552. A false weight or measure is one which does not conform to the standard established by the laws of the United States of America.

"False weight" and "measure" defined.

553. Every person who uses any weight or measure, knowing it to be false, by which use another is defrauded or otherwise injured, is guilty of a misdemeanor.

Using false weights or measures.

554. Every person who knowingly marks or stamps false or short weight or measure, or false tare, on any cask or package, or knowingly sells, or offers for sale, any cask or package so marked, is guilty of a misdemeanor.

Stamping false weight, measure, or tare on casks or packages.

CHAPTER XIII.

FRAUDULENT INSOLVENCIES BY CORPORATIONS, AND OTHER
FRAUDS IN THEIR MANAGEMENT.

SECTION 557. Frauds in subscriptions for stock of corporations.

- 558. Frauds in procuring organization of corporation, or increasing its capital.
- 559. Unauthorized use of names in prospectus, etc.
- 560. Misconduct of Directors of stock corporations.
- 561. Savings bank officer overdrawing his account.
- 562. Receiving deposits in insolvent banks.
- 563. Frauds in keeping accounts in books of corporations.
- 564. Officer of corporation publishing false reports of its condition.
- 565. Officer of corporation to permit an inspection of its books.
- 566. Officer of railroad company contracting debt in its behalf exceeding its available means.
- 567. Debt contracted in violation of last section not invalid.
- 568. Director of a corporation presumed to have knowledge of its affairs.
- 569. Director present at meeting, when presumed to have assented to proceedings.
- 570. Director absent from meeting, when presumed to have assented to proceedings.
- 571. Foreign corporations.
- 572. "Director" defined.

Fraud in
subscriptions for
stock of
corpora-
tions.

557. Every person who signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

Frauds in
procuring
organiza-
tion of
corpora-
tion, or
increasing
its capital.

558. Every officer, agent, or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged, or

altered book, paper, voucher, security, or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to be allowed an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the State Prison not less than three nor more than ten years.

559. Every person who, without being authorized so to do, subscribes the name of another to or inserts the name of another in any prospectus, circular, or other advertisement, or announcement of any corporation or joint stock association, existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.

Unauthorized use of name in prospectus, etc.

560. Every director of any stock corporation who concurs in any vote or act of the directors of such corporation or any of them, by which it is intended, either :

Misconduct of Directors of stock corporations.

1. To make any dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner, except as provided by law, pay to the stockholders, or any of them, any part of the capital stock of the corporation; or,

3. To discount or receive any note or other evidence of debt in payment of any installment actually called in and required to be paid, or with the intent to provide the means of making such payment; or,

4. To receive or discount any note or other evidence of debt, with the intent to enable any stockholder to

Director of
a corpora-
tion
presumed
to have
knowledge
of its affairs

568. Every director of a corporation or joint stock association is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding, or omission of its directors is a violation of this Chapter.

Director
present at
meeting,
when
presumed
to have
assented to
proceed-
ings.

569. Every director of a corporation or joint stock association who is present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this Chapter occurs, is deemed to have concurred therein, unless he at the time causes or in writing requires his dissent therefrom to be entered in the minutes of the directors.

Director
absent
from
meeting,
when
presumed
to have
assented to
proceed-
ings.

570. Every director of a corporation or joint stock association, although not present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this Chapter occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the records or minutes of the proceedings of the Board of Directors, and he remains a director of the same company for six months thereafter, and does not within that time cause, or in writing require, his dissent from such illegality to be entered in the minutes of the directors.

Foreign
corpora-
tions.

571. It is no defense to a prosecution for a violation of the provisions of this Chapter, that the corporation was one created by the laws of another State, Government, or country, if it was one carrying on business or keeping an office therefor within this State.

"Director"
defined.

572. The term "Director," as used in this Chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law.

CHAPTER XIV.

FRAUDULENT ISSUE OF DOCUMENTS OF TITLE TO MER-
CHANDISE.

SECTION 577. Issuing fictitious bills of lading, etc.

578. Issuing fictitious warehouse receipts.

579. Erroneous bills of lading or receipts issued in good faith excepted.

580. Duplicate receipts must be marked "duplicate."

581. Selling, hypothecating, or pledging property received for transportation or storage.

582. Bill of lading or receipt issued by warehouseman must be canceled on redelivery of the property.

583. Property demanded by process of law.

577. Every person, being the master, owner, or agent of any vessel, or officer or agent of any railroad, express, or transportation company, or otherwise being or representing any carrier, who delivers any bill of lading, receipt, or other voucher, by which it appears that any merchandise of any description has been shipped on board any vessel, or delivered to any railroad, express, or transportation company or other carrier, unless the same has been so shipped or delivered, and is at the time actually under the control of such carrier, or the master, owner, or agent of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt, or voucher, is punishable by imprisonment in the State Prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

Issuing
fictitious
bills of
lading, etc.

578. Every person carrying on the business of a warehouseman, wharfinger, or other depository of property, who issues any receipt, bill of lading, or other voucher for any merchandise of any description, which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such

Issuing
fictitious
warehouse
receipts.

merchandise or as security for any indebtedness, is punishable by imprisonment in the State Prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

Erroneous bills of lading or receipts issued in good faith excepted.

579. No person can be convicted of an offense under the last two sections by reason that the contents of any barrell, box, case, cask, or other vessel or package mentioned in the bill of lading, receipt, or other voucher did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels, or brands upon the outside of such vessel, or package, unless it appears that the accused knew that such marks, labels, or brands were untrue.

Duplicate receipts must be marked "duplicate."

580. Every person mentioned in this Chapter, who issues any second or duplicate receipt or voucher, of a kind specified therein, at a time while any former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "Duplicate," in a plain and legible manner, is punishable by imprisonment in the State Prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

Selling, hypothecating, or pledging property received for transportation or storage.

581. Every person mentioned in this Chapter, who sells, hypothecates, or pledges any merchandise for which any bill of lading, receipt, or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt, or voucher, is punishable by imprisonment in the State Prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

582. Every person mentioned in this Chapter, who delivers to another any merchandise for which any bill

of lading, receipt, or voucher has been issued, unless such receipt or voucher bore upon its face the words "Not negotiable," plainly written or stamped, or unless such receipt is surrendered to be canceled at the time of such delivery, or unless, in the case of a partial delivery, a memorandum thereof is indorsed upon such receipt or voucher, is punishable by imprisonment in the State Prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

Bill of lading or receipt issued by warehouseman must be canceled on redelivery of the property.

583. The last two sections do not apply where property is demanded or sold by virtue of process of law.

Property demanded by process of law.

CHAPTER XV.

MALICIOUS INJURIES TO RAILROAD BRIDGES, HIGHWAYS, BRIDGES, AND TELEGRAPHS.

SECTION 587. Injuries to railroads and railroad bridges.

588. Injuries to highways, private ways, and bridges.

589. Injuries to toll houses and gates.

590. Injuries to milestones and guide boards.

591. Injuring telegraph lines.

587. Every person who maliciously, either :

1. Removes, displaces, injures, or destroys any part of any railroad, whether for steam or horse cars, or any track of any railroad, or any branch or branchway, switch, turnout, bridge, viaduct, culvert, embankment, station house, or other structure or fixture, or any part thereof, attached to or connected with any railroad; or,
 2. Places any obstruction upon the rails or track of any railroad, or of any switch, branch, branchway, or turnout connected with any railroad;
- Is punishable by imprisonment in the State Prison not exceeding five years, or in the County Jail not less than six months.

Injuries to railroads and railroad bridges.

Injuries to
highways,
private
ways, and
bridges.

588. Every person who maliciously digs up, removes, displaces, breaks, or otherwise injures or destroys any public highway or bridge, or any private way laid out by authority of law, or bridge upon such highway or private way, is punishable by imprisonment in the State Prison not exceeding five years, or in the County Jail not exceeding one year.

Injuries to
toll houses
and gates.

589. Every person who maliciously injures or destroys any toll house or turnpike gate, is guilty of a misdemeanor.

Injuries to
milestones
and guide
boards.

590. Every person who maliciously removes or injures any mile board, post, or stone, or guide post, or any inscription on such, erected upon any highway, is guilty of a misdemeanor.

Injuring
telegraph
lines.

591. Every person who maliciously takes down, removes, injures, or obstructs any line of telegraph, or any part thereof, or appurtenance or apparatus connected therewith, or severs any wire thereof, is guilty of a misdemeanor.

TITLE XIV.

MALICIOUS MISCHIEF.

SECTION 594. Malicious mischief in general, defined.

595. Specifications in following sections not restrictive of last section.

596. Poisoning cattle.

597. Killing, maiming, or torturing animals.

598. Killing, etc., birds in cemeteries.

599. Killing seals and sea lions within one mile of Cliff House.

600. Burning buildings and other property not the subject of arson.

601. Using gunpowder, etc., in destroying or injuring any building.

602. Malicious injuries to freehold.

603. Limitation upon the operations of the preceding section.

SECTION 604. Injuries to standing crops, etc.

- 605. Removing, defacing, or altering landmarks.
- 606. Destroying or injuring jails.
- 607. Destroying or injuring bridges, dams, levees, water dams, etc.
- 608. Burning or injuring rafts. Setting adrift vessels.
- 609. Removing buoys and beacons.
- 610. Masking or removing signal lights, or exhibiting false lights.
- 611. Obstructing navigable streams.
- 612. Depositing sand, dust, etc., in Humboldt Bay.
- 613. Throwing overboard ballast, or otherwise obstructing the navigation of any harbor, etc.
- 614. Mooring vessels to buoys.
- 615. Injuries to signals, monuments, etc., erected in United States Coast Survey.
- 616. Destroying or tearing down notices, etc., before expiration of time for which they were to remain set up.
- 617. Injuring or destroying written instrument.
- 618. Opening or publishing sealed letters.
- 619. Disclosing contents of telegraphic message.
- 620. Altering telegraphic messages.
- 621. Opening sealed envelops containing telegraphic dispatches.
- 622. Injuring works of art or improvements in any city, town, or village.
- 623. Destroying works of literature, etc., in public libraries.
- 624. Breaking or obstructing gas or water pipes, etc.
- 625. Drawing water from works after they have been closed.

594. Every person who maliciously injures or destroys any real or personal property not his own, in cases otherwise than such as are specified in this Code, is guilty of a misdemeanor.

Malicious mischief in general, defined.

595. The specification of the Acts enumerated in the following sections of this Chapter is not intended to restrict or qualify the interpretation of the preceding section.

Specifications in following sections not restrictive of last section.

596. Every person who willfully administers any poison to an animal, the property of another, or maliciously exposes any poisonous substance, with the intent that the same shall be taken or swallowed by any such animal, is punishable by imprisonment in the State Prison not exceeding three years, or in the

Poisoning cattle.

County Jail not exceeding one year, and a fine not exceeding five hundred dollars.

Killing,
maiming,
or torturing
animals.

597. Every person who maliciously kills, maims, or wounds an animal, the property of another, or who maliciously and cruelly beats, tortures, or injures any animal, whether belonging to himself or another, is guilty of a misdemeanor.

Killing,
etc., birds
in
cemeteries.

598. Every person who, within any public cemetery or burying ground, kills, wounds, or traps any bird, or destroys any bird's nest other than swallows' nests, or removes any eggs or young birds from any nest, is guilty of a misdemeanor.

Killing
seals and
sea lions
within one
mile of
Cliff House.

599. Every person who willfully kills or destroys any seal or sea lion within one mile of the Cliff House, in the City and County of San Francisco, is guilty of a misdemeanor.

Burning
buildings
and other
property
not the
subject
of arson.

600. Every person who willfully and maliciously burns any bridge exceeding in value fifty dollars, or any building, snowshed, or vessel, not the subject of arson, or any stack of grain of any kind, or of hay, or any growing or standing grain, grass, or tree, or any fence, not the property of such person, is punishable by imprisonment in the State Prison for not less than one nor more than ten years.

Using
gunpowder,
etc., in
destroying
or injuring
any
building.

601. Every person who maliciously, by the explosion of gunpowder or other explosive substance, destroys, throws down, or injures the whole or any part of any building, by means of which the life or safety of a human being is endangered, is guilty of felony.

Malicious
injuries to
freehold.

602. Every person who willfully commits any trespass, by either:

1. Cutting down, destroying, or injuring any kind of

wood or timber standing or growing upon the lands of same another; or,

2. Carrying away any kind of wood or timber that has been cut down and is lying on such lands; or,

3. Maliciously injuring or severing from the freehold of another anything attached thereto, or the produce thereof; or,

4. Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant thereof, any earth, soil, or stone; or,

5. Digging, taking, or carrying away from any land in any of the cities of the State, laid down on the map or plan of such city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone; or,

6. Putting up, affixing, fastening, printing, or painting upon any property belonging to the State, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for, any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention thereto;

—Is guilty of a misdemeanor.

NOTE.—Stats. 1871-2, p. 384.

An Act to prevent persons passing through inclosures and leaving them open, and tearing down fences to make passage through inclosures.

[Approved March 16, 1872.]

[Enacting clause.]

SECTION 1. Any person passing through an inclosure of another and leaving the same open, is guilty of a misdemeanor, and punishable by a fine not less than twenty dollars nor more than fifty dollars.

SEC. 2. Any person willfully or maliciously tearing down fences to make a passage through an inclosure, is guilty of a misdemeanor, and punishable by a fine not

less than fifty dollars nor more than five hundred dollars.

SEC. 3. All fines collected under the provisions of this Act shall be paid into the County School Fund of the county where the offense is committed.

SEC. 4. This Act shall take effect immediately.

Limitation
upon the
operations
of the
preceding
section.

603. The following acts do not constitute a public offense, within the meaning of the preceding section:

1. Gathering pitch from trees on the public lands of the State or United States, unless the bark from such trees is removed for more than one eighth of their circumference, or cut made more than three inches in depth into the wood thereof;

2. Cutting trees upon the public lands of the State or United States, in good faith, for the purpose of manufacturing the same into lumber or firewood, or preparing such lands for agricultural or mining purposes;

—Unless such acts are committed upon swamp and overflowed, tide, salt marsh, or school lands belonging to the State, or within the limits of the lands granted by the United States to this State by Act of Congress of June thirteenth, eighteen hundred and sixty-four, relating to the Yosemite Valley and Mariposa Big Tree Grove.

Injuries to
standing
crops, etc.

604. Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this Code, is guilty of a misdemeanor.

Removing,
defacing, or
altering
landmarks

605. Every person who either:

1. Maliciously removes any monument erected for the purpose of designating any point in the boundary of any lot or tract of land, or a place where a subaqueous telegraph cable lies; or,

2. Maliciously defaces or alters the marks upon any such monument; or,

3. Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks;
—Is guilty of a misdemeanor.

606. (§ 141.) Every person who willfully and intentionally breaks down, pulls down, or otherwise destroys or injures any public jail or other place of confinement, is punishable by fine not exceeding ten thousand dollars, and by imprisonment in the State Prison not exceeding five years.

Destroying
or injuring
jails.

607. (§ 140.) Every person who willfully and maliciously cuts, breaks, injures, or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure erected to create hydraulic power, or to drain or reclaim any swamp and overflowed, tide, or marsh land, or to conduct water for mining, manufacturing, reclamation, or agricultural purposes, or any embankment necessary to the same, or either of them; or willfully or maliciously makes, or causes to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure, with intent to injure or destroy the same; or draws up, cuts, or injures any piles fixed in the ground, and used for securing any sea bank or sea walls, or any dock, quay, or jetty, lock, or sea wall, is punishable by a fine not exceeding one thousand dollars, or by imprisonment in the State Prison not exceeding two years, or by both.

Destroying
or injuring
bridges,
dams,
levees,
water
dams, etc.

608. (§ 141.) Every person who willfully and maliciously burns, injures, or destroys any pile or raft of wood, plank, boards, or other lumber, or any part thereof, or cuts loose or sets adrift any such raft or part thereof, or cuts, breaks, injures, sinks, or sets adrift any vessel, the property of another, is punishable by fine not exceeding five hundred dollars, or by

Burning or
injuring
rafts.

Setting
adrift
vessels.

imprisonment in the County Jail not exceeding six months.

Removing
buoys and
beacons.

609. Every person who willfully removes any buoy or beacon, placed in any waters within this State by lawful authority, is guilty of a misdemeanor.

Masking or
removing
signal
lights, or
exhibiting
false lights.

610. Every person who unlawfully masks, alters, or removes any light or signal, or willfully exhibits any light or signal, with intent to bring any vessel into danger, is punishable by imprisonment in the State Prison not less than three nor more than ten years.

Obstructing
navigable
streams.

611. Every person who unlawfully obstructs the navigation of any navigable stream, is guilty of a misdemeanor.

Depositing
sand, dust,
etc., in
Humboldt
Bay.

612. Every person who throws, deposits, or permits another in his employ to throw or deposit, any sawdust, slabs, or refuse lumber, in any place where it may be carried or fall into the waters of Humboldt Bay, without first having constructed piers, bulkheads, dams, or other contrivances, approved by the Board of Supervisors of Humboldt County, to prevent the same from escaping into the channels of such bay, is guilty of a misdemeanor.

Throwing
overboard
ballast, or
otherwise
obstructing
the
navigation
of any
harbor, etc.

613. Every person who, within the anchorage of any port, harbor, or cove of this State, into which vessels may enter for the purpose of receiving or discharging cargo, throws overboard from any vessel the ballast, or any part thereof, or who otherwise places or causes to be placed in such port, harbor, or cove, any obstructions to the navigation thereof, is guilty of a misdemeanor.

Mooring
vessels to
buoys.

614. Every person mooring any vessel to or hanging on with a vessel to any buoy or beacon, placed by competent authority in any navigable waters of this State, is guilty of a misdemeanor.

615. Every person who willfully injures, defaces, or removes any signal, monument, building, or appurtenance thereto, placed, erected, or used by persons engaged in the United States Coast Survey, is guilty of a misdemeanor.

Injuries to signals, monuments, etc., erected in United States Coast Survey.

616. Every person who intentionally defaces, obliterates, tears down, or destroys any copy or transcript, or extract from or of any law of the United States or of this State, or any proclamation, advertisement, or notification set up at any place in this State, by authority of any law of the United States or of this State, or by order of any Court, before the expiration of the time for which the same was to remain set up, is punishable by fine not less than twenty nor more than one hundred dollars, or by imprisonment in the County Jail not more than one month.

Destroying or tearing down notices, etc., before expiration of time for which they were to remain set up.

617. Every person who maliciously mutilates, tears, defaces, obliterates, or destroys any written instrument, the property of another, the false making of which would be forgery, is punishable by imprisonment in the State Prison for not less than one nor more than five years.

Injuring or destroying written instrument

618. (§ 111.) Every person who willfully opens or reads, or causes to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter or by the person to whom it is addressed, and every person who, without the like authority, publishes any of the contents of such letter, knowing the same to have been unlawfully opened, is guilty of a misdemeanor.

Opening or publishing sealed letters.

619. Every person who willfully discloses the contents of a telegraphic message, or any part thereof, addressed to another person, without the permission of such person, is punishable by imprisonment in the

Disclosing contents of telegraphic message.

State Prison not exceeding five years, or in the County Jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment.

Altering
tele-
graphic
messages.

620. Every person who willfully alters the purport, effect, or meaning of a telegraphic message, to the injury of another, is punishable as provided in the preceding section.

Opening
sealed
envelops
containing
tele-
graphic
dispatches.

621. Every person not connected with any telegraph office who, without the authority or consent of the person to whom the same may be directed, willfully opens any sealed envelop inclosing a telegraphic message and addressed to any other person, with the purpose of learning the contents of such message, or who fraudulently represents any other person and thereby procures to be delivered to himself any telegraphic message addressed to such other person, with the intent to use, destroy, or detain the same from the person or persons entitled to receive such message, is punishable as provided in Section 619.

Injuring
works of
art or
improve-
ments in
any city,
town, or
village.

622. Every person, not the owner thereof, who willfully injures, disfigures, or destroys any monument, work of art, or useful or ornamental improvement within the limits of any village, town, or city, or any shade tree or ornamental plant growing therein, whether situated upon private ground or on any street, sidewalk, or public park or place, is guilty of a misdemeanor.

Destroying
works of
literature,
etc., in
public
libraries.

623. Every person who maliciously cuts, tears, defaces, breaks, or injures any book, map, chart, picture, engraving, statue, coin, model, apparatus, or other work of literature, art, or mechanics, or object of curiosity deposited in any public library, gallery, museum, collection, fair, or exhibition, is guilty of felony.

624. Every person who willfully breaks, digs up, obstructs, or injures any pipe or main for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenances or appendages therewith connected, is guilty of a misdemeanor.

Breaking
or obstruct-
ing gas or
water
pipes, etc.

625. Every person who, with intent to defraud or injure, opens or causes to be opened, or draws water from any stopcock or faucet by which the flow of water is controlled, after having been notified that the same has been closed or shut for specific cause, by order of competent authority, is guilty of a misdemeanor.

Drawing
water from
works after
they
been
closed.

TITLE XV.

MISCELLANEOUS CRIMES.

CHAPTER I. *Violation of the laws for the preservation of game and fish.*

II. *Of other and miscellaneous offenses.*

CHAPTER I.

VIOLATION OF THE LAWS FOR THE PRESERVATION OF GAME AND FISH.

SECTION 626. Destruction of grouse, duck, etc., when prohibited.

627. Same.

628. Destruction of elk, etc., when prohibited.

629. Having game in possession during the time that killing thereof is prohibited.

630. Use of phosphorus on land in certain counties prohibited.

631. Taking trout, when prohibited.

632. Same.

633. Taking trout by nets, etc., prohibited.

SECTION 634. Taking salmon, when prohibited.

635. Use of poisonous or explosive substances in fishing prohibited.

636. California Indians exempted from certain penalties.

637. Fishways and ladders, penalties for not keeping.

Destruction of
grouse,
duck, etc.,
when
prohibited.

626. Every person who, in the Counties of San Bernardino or Los Angeles, between the first day of August of any year and the first day of April of the next year, or who in any other of the counties of this State, except the Counties of Lassen, Plumas, and Sierra, between the fifteenth day of March and the fifteenth day of September in each year, takes, kills, or destroys quail, partridges, or grouse, mallard, wood, teal, spoonbill, or any kind of broadbill ducks, is guilty of a misdemeanor.

NOTE.—Stats. 1871-2, pp. 102, 103.

An Act to prevent the capture and destruction of mocking birds in this State.

[Approved February 14, 1872.]

[Enacting clause.]

SECTION 1. Any person or persons who shall willfully and knowingly shoot, wound, trap, snare, or in any other manner catch or capture any mocking bird in the State of California, or shall knowingly take, injure, or destroy the nest of any mocking bird, or shall take, injure, or destroy any mocking bird's eggs, in the nest or otherwise, in said State, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any Justice of the Peace of the township in which the offense shall have been committed, shall be fined in a sum not less than five dollars nor exceeding ten dollars, and cost of the action for each offense, or may be imprisoned not less than five days nor more than ten days, or by both such fine and imprisonment, as the judgment of the Court may direct.

SEC. 2. All fines collected under the provisions of this Act shall be paid into the County Treasury for the benefit of the Common School Fund.

SEC. 3. This Act shall take effect and be in force from and after its passage.

Same.

627. Every person who, in the Counties of Lassen, Plumas, or Sierra, between the fifteenth day of March

and the fifteenth day of September in each year, takes, kills, or destroys quail, partridges, or grouse, or who, in either of such counties, between the fifteenth day of March and the fifteenth day of August in each year, takes, kills, or destroys mallard, wood, teal, spoonbill, or any kind of broadbill ducks, is guilty of a misdemeanor.

628. Every person who, between the first day of January and the first day of July in each year, takes, kills, or destroys any elk, deer, or antelope, is guilty of a misdemeanor. Destruction of elk, etc., when prohibited.

629. Every person who buys, sells, or has in his possession any of the game enumerated in the two preceding sections, within the time the taking or killing thereof is prohibited, except such as are tamed or kept for show or curiosity, is guilty of a misdemeanor. Having game in possession during the time that killing thereof is prohibited.

630. Every person who, in the Counties of Santa Clara, Contra Costa, San Joaquin, Santa Cruz, or San Mateo, uses or distributes phosphorus upon any land or ground, between the first day of March and the first day of November in any year, is guilty of a misdemeanor. Use of phosphorus on land in certain counties prohibited.

631. Every person who, between the fifteenth day of October in each year and the first day of April in the following year, takes or catches any trout, is guilty of a misdemeanor. Taking trout, when prohibited.

632. Every person who, in the Counties of Santa Clara, Santa Cruz, San Mateo, Monterey, Alameda, Marin, Placer, or Nevada, at any time takes or catches any trout, except with hook and line, is guilty of a misdemeanor. Same.

633. Every person who takes, catches, or kills any trout by the use of nets, weirs, baskets, or traps, is guilty of a misdemeanor. Taking trout by nets, etc., prohibited.

Taking
salmon,
when
prohibited.

634. Every person who, between the first day of June and the first day of September in each year, takes or catches any salmon, is guilty of a misdemeanor.

Use of
poisonous
or
explosive
substances
in fishing
prohibited.

635. Every person who puts into the waters of this State, or who uses any poisons, or explosive substances, for the purpose of taking or destroying fish, is guilty of a misdemeanor.

California
Indians
exempted
from
certain
penalties.

636. California Indians, taking fish for their own subsistence, are exempted from the penalties prescribed in Sections 631, 632, 633, and 634.

Fishways
and
ladders,
penalties
for not
keeping.

637. Every owner of a dam or other obstruction in the waters of this State, who, after being requested by the Fish Commissioners so to do, fails to construct and keep in repair sufficient fishways or ladders on such dam or obstruction, is guilty of a misdemeanor.

CHAPTER II.

OF OTHER AND MISCELLANEOUS OFFENSES.

SECTION 638. Neglect or postponement out of regular order of telegraphic messages. Limitations.

639. Agent, operator, or employé using information from messages.

640. Clandestinely learning the contents of a telegraphic message.

641. Bribing telegraphic operator.

642. Collecting tolls, etc., at San Francisco, without authority of Harbor Commissioners.

643. Violations of the provisions of the Chapter relating to police regulations of San Francisco harbor.

644. Enticing seamen to desert.

645. Harboring deserting seamen.

646. Aiding apprentices to run away or harboring them.

647. Vagrants.

648. Issuing or circulating paper money.

649. Officers of fire department issuing false certificates of exemption.

SECTION 650. Sending letters threatening to expose another.

651. Requiring wards or apprentices to work more than eight hours.

652. Officer or member of National Guard failing to attend parade, obey orders, or discharge duty.

653. Member of National Guard failing to attend parade, etc., when notified.

638. Every agent, operator, or employé of any telegraph office, who willfully refuses or neglects to send any message received at such office for transmission, or willfully postpones the same out of its order, or willfully refuses or neglects to deliver any message received by telegraph, is guilty of a misdemeanor. Nothing herein contained shall be construed to require any message to be received, transmitted, or delivered, unless the charges thereon have been paid or tendered, nor to require the sending, receiving, or delivery of any message counseling, aiding, abetting, or encouraging treason against the Government of the United States or of this State, or other resistance to the lawful authority, or any message calculated to further any fraudulent plan or purpose, or to instigate or encourage the perpetration of any unlawful act, or to facilitate the escape of any criminal or person accused of crime.

Neglect or postponement out of regular order of telegraphic messages.

Limitations.

639. Every agent, operator, or employé of any telegraph office who in any way uses or appropriates any information derived by him from any private message passing through his hands, and addressed to any other person, or in any other manner acquired by him by reason of his trust as such agent, operator, or employé, or trades or speculates upon any such information so obtained, or in any manner turns, or attempts to turn, the same to his own account, profit, or advantage, is punishable by imprisonment in the State Prison not exceeding five years, or by imprisonment in the County Jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Agent, operator, or employé using information from messages.

Clandestinely learning the contents of a telegraphic message.

640. Every person who, by means of any machine, instrument, or contrivance, or in any other manner, willfully and fraudulently reads, or attempts to read, any message, or to learn the contents thereof, whilst the same is being sent over any telegraph line, or willfully and fraudulently, or clandestinely, learns or attempts to learn the contents or meaning of any message, while the same is in any telegraph office, or is being received thereat or sent therefrom, or who uses or attempts to use, or communicates to others, any information so obtained, is punishable as provided in Section 639.

Bribing telegraphic operator.

641. Every person who, by the payment or promise of any bribe, inducement, or reward, procures or attempts to procure any telegraph agent, operator, or employé to disclose any private message or the contents, purport, substance, or meaning thereof, or offers to any such agent, operator, or employé any bribe, compensation, or reward for the disclosure of any private information received by him by reason of his trust as such agent, operator, or employé, or uses or attempts to use any such information so obtained, is punishable as provided in Section 639.

Collecting tolls, etc., at San Francisco, without authority of Harbor Commissioners.

642. Every person who collects any toll, wharfage, or dockage, or lands, ships, or removes any property upon or from any portion of the water front of San Francisco, or from or upon any of the wharves, piers, or landings under the control of the Board of State Harbor Commissioners, without being by such Board authorized so to do, is guilty of a misdemeanor.

Violations of the provisions of the Chapter relating to police regulations of San Francisco harbor.

643. Every person who violates any of the provisions of the laws of this State relating to sailor boarding houses and shipping offices in San Francisco, or who receives any gratuity or reward other than as therein provided, for the performance of any services

under a license issued pursuant to the provisions of such laws, is guilty of a misdemeanor.

644. Every person who entices seamen to desert from any vessel lying in the waters of this State, and on board of which they have shipped for a term or voyage unexpired at the time of such enticement, is guilty of a misdemeanor. Enticing seamen to desert.

645. Every person who harbors or secretes any seaman, knowing him to be shipped, and with a view to persuade or enable him to desert, is guilty of a misdemeanor. Harboring deserting seamen.

646. Every person who willfully and knowingly aids, assists, or encourages to run away, or who harbors or conceals any person bound or held to service or labor, is guilty of a misdemeanor. Aiding apprentices to run away or harboring them.

647. Every person (except a California Indian) without visible means of living, who has the physical ability to work, and who does not for the space of ten days seek employment, nor labor when employment is offered him; every healthy beggar who solicits alms as a business; every person who roams about from place to place without any lawful business; every idle or dissolute person, or associate of known thieves, who wanders about the streets at late or unusual hours of the night, or who lodges in any barn, shed, shop, out-house, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof; every lewd and dissolute person, who lives in and about houses of ill-fame, and every common prostitute and common drunkard, is a vagrant, and punishable by imprisonment in the County Jail not exceeding ninety days. Vagrants.

648. Every person who makes, issues, or puts in circulation any bill, check, ticket, certificate, prom- Issuing or circulating paper money.

issory note, or the paper of any bank, to circulate as money, except as authorized by the laws of the United States, for the first offense, is guilty of a misdemeanor, and for each and every subsequent offense, is guilty of felony.

Officers
of fire
depart-
ment issu-
ing false
certificates
of exemp-
tion.

649. Every officer of a fire department who willfully issues or causes to be issued any certificate of exemption to a person not entitled thereto, is guilty of a misdemeanor.

Sending
letters
threaten-
ing to
expose
another.

650. Every person who knowingly and willfully sends or delivers to another any letter or writing, whether subscribed or not, threatening to accuse him or another of a crime, or to expose or publish any of his failings or infirmities, is guilty of a misdemeanor.

Requiring
wards or
apprentices
to work
more than
eight
hours.

651. Every person having a minor child under his control, either as a ward or an apprentice, who, except in vinicultural or horticultural pursuits, or in domestic or household occupations, requires such child to labor more than eight hours in any one day, is guilty of a misdemeanor.

NOTE.—Stats. 1871-2, p. 951.

An Act to protect the wages of labor and the salaries and fees of subordinate officers.

[Approved April 1, 1872.]

[Enacting clause.]

SECTION 1. Every person who employs laborers upon the public works, and who takes, keeps, or receives any part or portion of the wages due to such laborers from the State or municipal corporation for which such work is done, is guilty of a felony.

SEC. 2. Every officer of the State, or any county, city, or township therein, who keeps or retains any part or portion of the salary or fees allowed by law to his deputy, clerk, or subordinate officer, is guilty of a felony.

SEC. 3. This Act shall be in force from and after its passage.

652. Every commissioned officer of the National Guard who willfully fails to attend any parade or encampment, and every member of the National Guard who neglects or refuses to obey the lawful command of his superior on any day of parade or encampment, or to perform such military duty as may be lawfully required of him, is punishable by a fine of not less than five nor more than one hundred dollars.

Officer or member of National Guard failing to attend parade, obey orders, or discharge duty.

653. Every member of the National Guard who, when duly notified, fails to appear at a parade, or who disobeys any lawful order, or who uses disrespectful language towards his superior, or who commits any act of insubordination, is guilty of a misdemeanor.

Member of National Guard failing to attend parade, etc., when notified.

NOTE.—The section numbers of this Code, placed thus, (§ 1), (§ 65), and so on, to many of the preceding sections, indicate the sections of the original Act of April 16, 1850, "Concerning crimes and punishments." They were used in Hittell, and are here retained for convenience in reference.

TITLE XVI.

GENERAL PROVISIONS.

SECTION 654. Acts made punishable by different provisions of this Code.

- 655. Acts punishable under foreign law.
- 656. Foreign conviction or acquittal.
- 657. Contempts, how punishable.
- 658. Mitigation of punishment in certain cases.
- 659. Aiding in misdemeanor.
- 660. Sending letters, when deemed complete.
- 661. Removal from office for violation or neglect of official duty by public officers.
- 662. Omission to perform duty, when punishable.
- 663. Attempts to commit crimes, when punishable.
- 664. Attempts to commit crimes, how punishable.
- 665. Restrictions upon the preceding sections.

SECTION 666. Second offense, how punished after conviction of former offense.

667. Second offenses, how punished after conviction of attempt to commit a State Prison offense.

668. Foreign conviction for former offense.

669. Second term of imprisonment, when to commence.

670. When term of imprisonment commences, etc.

671. Imprisonment for life.

672. Fine may be added to imprisonment.

673. Civil rights of convict suspended.

674. Civil death.

675. Limitations on two preceding sections.

676. Person of convict protected.

677. Forfeitures.

Acts made
punishable
by different
provisions
of this
Code.

654. An act or omission which is made punishable in different ways by different provisions of this Code may be punished under either of such provisions, but in no case can it be punished under more than one; an acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other. In the cases specified in Sections 648, 667, and 668, the punishments therein prescribed must be substituted for those prescribed for a first offense, if the previous conviction is charged in the indictment and found by the jury.

Acts
punishable
under
foreign
law.

655. An act or omission declared punishable by this Code is not less so because it is also punishable under the laws of another State, Government, or country, unless the contrary is expressly declared.

Foreign
conviction
or acquittal

656. Whenever on the trial of an accused person it appears that upon a criminal prosecution under the laws of another State, Government, or country, founded upon the act or omission in respect to which he is on trial, he has been acquitted or convicted, it is a sufficient defense.

Contempts,
how
punishable

657. A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt.

658. When it appears, at the time of passing sentence upon a person convicted upon indictment, that such person has already paid a fine or suffered an imprisonment for the act of which he stands convicted, under an order adjudging it a contempt, the Court authorized to pass sentence may mitigate the punishment to be imposed, in its discretion.

Mitigation
of punish-
ment in
certain
cases.

659. Whenever an act is declared a misdemeanor, and no punishment for counseling or aiding in the commission of such act is expressly prescribed by law, every person who counsels or aids another in the commission of such act is guilty of a misdemeanor.

Aiding in
misdemeanor.

660. In the various cases in which the sending of a letter is made criminal by this Code, the offense is deemed complete from the time when such letter is deposited in any Post Office or any other place, or delivered to any person, with intent that it shall be forwarded.

Sending
letters,
when
deemed
complete.

661. In addition to the penalty affixed by express terms, to every neglect or violation of official duty on the part of public officers, State, county, city, or township, where it is not so expressly provided, they may, in the discretion of the Court, be removed from office.

Removal
from office
for viola-
tion or
neglect of
official duty
by public
officers.

662. No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf and competent by law to perform it.

Omission to
perform
duty, when
punishable

663. Any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was perpetrated by such person in pursuance of such attempt, unless the Court, in its discretion, discharges the jury and directs such person to be tried for such crime.

Attempts
to commit
crimes,
when
punishable

Attempts
to commit
crimes,
how
punishable

664. Every person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempts, as follows :

1. If the offense so attempted is punishable by imprisonment in the State Prison for five years, or more, or by imprisonment in a County Jail, the person guilty of such attempt is punishable by imprisonment in the State Prison, or in a County Jail, as the case may be, for a term not exceeding one half the longest term of imprisonment prescribed upon a conviction of the offense so attempted.

2. If the offense so attempted is punishable by imprisonment in the State Prison for any term less than five years, the person guilty of such attempt is punishable by imprisonment in the County Jail for not more than one year.

3. If the offense so attempted is punishable by a fine, the offender convicted of such attempt is punishable by a fine not exceeding one half the largest fine which may be imposed upon a conviction of the offense so attempted.

4. If the offense so attempted is punishable by imprisonment and by a fine, the offender convicted of such attempt may be punished by both imprisonment and fine, not exceeding one half the longest term of imprisonment and one half the largest fine which may be imposed upon a conviction for the offense so attempted.

Restrictions upon
the
preceding
sections.

665. The last two sections do not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

666. Every person who, having been convicted of any offense punishable by imprisonment in the State Prison, commits any crime after such conviction, is punishable therefor, as follows:

Second offense, how punished after conviction of former offense.

1. If the offense of which such person is subsequently convicted is such that, upon a first conviction, an offender would be punishable by imprisonment in the State Prison for any term exceeding five years, such person is punishable by imprisonment in the State Prison not less than ten years.

2. If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the State Prison for five years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the State Prison not exceeding ten years.

3. If the subsequent conviction is for petit larceny, or any attempt to commit an offense which, if committed, would be punishable by imprisonment in the State Prison not exceeding five years, then the person convicted of such subsequent offense is punishable by imprisonment in the State Prison not exceeding five years.

667. Every person who, having been convicted of petit larceny, or of an attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the State Prison, commits any crime after such conviction, is punishable as follows:

Second offenses, how punished after conviction of attempt to commit a State Prison offense.

1. If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the State Prison for life, at the discretion of the Court, such person is punishable by imprisonment in such prison during life.

2. If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the State Prison for any term less than for life, such person is punishable by imprisonment in

such prison for the longest term prescribed, upon a conviction for such first offense.

3. If the subsequent conviction is for petit larceny, or for an attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the State Prison, then such person is punishable by imprisonment in such prison not exceeding five years.

Foreign
conviction
for former
offense.

668. Every person who has been convicted in any other State, Government, or country, of an offense which, if committed within this State, would be punishable by the laws of this State by imprisonment in the State Prison, is punishable for any subsequent crime committed within this State in the manner prescribed in the last two sections, and to the same extent as if such first conviction had taken place in a Court of this State.

Second
term of
imprison-
ment,
when to
commence.

669. When any person is convicted of two or more crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction must commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second or other subsequent term of imprisonment, as the case may be.

When
term of
imprison-
ment com-
mences, etc

670. The term of imprisonment fixed by the judgment in a criminal action commences to run only upon the actual delivery of the defendant at the place of imprisonment, and if thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

Imprison-
ment for
life.

671. Whenever any person is declared punishable for a crime by imprisonment in the State Prison for a term not less than any specified number of years, and

no limit to the duration of such imprisonment is declared, the Court authorized to pronounce judgment upon such conviction may, in its discretion, sentence such offender to imprisonment during his natural life, or for any number of years not less than that prescribed.

672. Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the Court may impose a fine on the offender not exceeding two hundred dollars, in addition to the imprisonment prescribed.

Fine may be added to imprisonment.

673. A sentence of imprisonment in a State Prison for any term less than for life suspends all the civil rights of the person so sentenced, and forfeits all public offices and all private trusts, authority, or power during such imprisonment.

Civil rights of convict suspended.

674. A person sentenced to imprisonment in the State Prison for life is thereafter deemed civilly dead.

Civil death

675. The provisions of the two preceding sections must not be construed to render the persons therein mentioned incompetent as witnesses upon the trial of a criminal action or proceeding, or incapable of making and acknowledging a sale or conveyance of property, or to do such other acts as are permitted by law.

Limitations on two preceding sections.

676. The person of a convict sentenced to imprisonment in the State Prison is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not convicted or sentenced.

Person of convict protected.

677. No conviction of any person for crime works any forfeiture of any property, except in cases in which a forfeiture is expressly imposed by law; and all forfeitures to the people of this State, in the nature of a deodand, or where any person shall flee from justice, are abolished.

Forfeitures

PART II.

OF CRIMINAL PROCEDURE.

PART II.

OF CRIMINAL PROCEDURE.

PRELIMINARY PROVISIONS.

SECTION 681. No person punishable but on legal conviction.

682. Public offenses, how prosecuted.

683. Criminal action defined.

684. Parties to a criminal action.

685. The party prosecuted known as defendant.

686. Rights of defendant in a criminal action.

687. Second prosecution for the same offense prohibited.

688. No person to be a witness against himself in a criminal action, or to be unnecessarily restrained.

689. No person to be convicted but upon verdict or judgment.

681. (§ 6.) No person can be punished for a public offense, except upon a legal conviction in a Court having jurisdiction thereof.

No person punishable but on legal conviction.

682. (§ 7.) Every public offense must be prosecuted by indictment, except:

Public offenses, how prosecuted

1. Where proceedings are had for the removal of civil officers of the State.

2. Offenses arising in the militia when in actual service, and in the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace.

3. Offenses tried in Justices' and Police Courts.

**Criminal
action
defined.**

683. (§ 8.) The proceeding by which a party charged with a public offense is accused and brought to trial and punishment, is known as a criminal action.

**Parties to
a criminal
action.**

684. (§ 9.) A criminal action is prosecuted in the name of the people of the State of California, as a party, against the person charged with the offense.

**The party
prosecuted
known as
defendant.**

685. (§ 10.) The party prosecuted in a criminal action is designated in this Code as the defendant.

**Rights of
defendant
in a
criminal
action.**

686. (§ 11.) In a criminal action the defendant is entitled :

1. To a speedy and public trial.
2. To be allowed counsel as in civil actions, or to appear and defend in person and with counsel.
3. To produce witnesses on his behalf, and to be confronted with the witnesses against him, in the presence of the Court, except that where the charge has been preliminarily examined before a committing magistrate and the testimony taken down by question and answer in the presence of the defendant, who has, either in person or by counsel, cross-examined or had an opportunity to cross-examine the witness; or where the testimony of a witness on the part of the people, who is unable to give security for his appearance, has been taken conditionally in the like manner in the presence of the defendant, who has, either in person or by counsel, cross-examined or had an opportunity to cross-examine the witness, the deposition of such witness may be read, upon its being satisfactorily shown to the Court that he is dead or insane, or cannot with due diligence be found within the State.

**Second
prosecution
for the
same
offense
prohibited.**

687. (§ 12.) No person can be subjected to a second prosecution for a public offense for which he has once been prosecuted and convicted or acquitted.

688. (§ 13.) No person can be compelled, in a criminal action, to be a witness against himself; nor can a person charged with a public offense be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.

No person to be a witness against himself in a criminal action, or to be unnecessarily restrained.

689. (§ 14.) No person can be convicted of a public offense unless by the verdict of a jury, accepted and recorded by the Court, or upon a plea of guilty, or upon judgment against him upon a demurrer to the indictment, in the case mentioned in Section 1011, or upon a judgment of a Police or Justice's Court, a jury having been waived.

No person to be convicted but upon verdict or judgment.

TITLE I.

OF THE PREVENTION OF PUBLIC OFFENSES.

CHAPTER I. *Of lawful resistance.*

II. *Of the intervention of the officers of justice.*

III. *Security to keep the peace.*

IV. *Police in cities and towns, and their attendance at exposed places.*

V. *Suppression of riots.*

CHAPTER I.

OF LAWFUL RESISTANCE.

SECTION 692. Lawful resistance, by whom made.

693. By the party, in what cases and to what extent.

694. By other parties, in what cases.

Lawful
resistance,
by whom
made.

692. (§ 15.) Lawful resistance to the commission of a public offense may be made:

1. By the party about to be injured;
2. By other parties.

By the
party, in
what cases
and to what
extent.

693. (§ 16.) Resistance sufficient to prevent the offense may be made by the party about to be injured:

1. To prevent an offense against his person, or his family, or some member thereof.
2. To prevent an illegal attempt by force to take or injure property in his lawful possession.

By other
parties, in
what cases.

694. (§ 17.) Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

CHAPTER II.

OF THE INTERVENTION OF THE OFFICERS OF JUSTICE.

SECTION 697. Intervention of officers, in what cases.

698. Persons acting in their aid justified.

Interven-
tion of
officers, in
what cases.

697. (§ 18.) Public offenses may be prevented by the intervention of the officers of justice:

1. By requiring security to keep the peace;
2. By forming a police in cities and towns, and by requiring their attendance in exposed places;
3. By suppressing riots.

Persons
acting in
their aid
justified.

698. (§ 19.) When the officers of justice are authorized to act in the prevention of public offenses, other persons, who, by their command, act in their aid, are justified in so doing.

CHAPTER III.

SECURITY TO KEEP THE PEACE.

- SECTION 701. Information of threatened offense.
 702. Examination of complainant and witnesses.
 703. Warrant of arrest.
 704. Proceedings on charges being controverted.
 705. Person complained of, when to be discharged.
 706. Security to keep the peace, when required.
 707. Effect of giving or refusing to give security.
 708. Person committed or not giving security, how discharged.
 709. Undertaking to be filed in Clerk's office.
 710. Security, when required for assault committed in the presence of a Court or magistrate.
 711. Undertaking, when broken.
 712. Undertaking, when and how to be prosecuted.
 713. Evidence of breach.
 714. Security for the peace not required, except in accordance with this Chapter.

701. (§ 20.) An information may be laid before any of the magistrates mentioned in Section 808, that a person has threatened to commit an offense against the person or property of another. Information of threatened offense.

702. (§ 21.) When the information is laid before such magistrate he must examine on oath the informer, and any witness he may produce, and must take their depositions in writing, and cause them to be subscribed by the parties making them. Examination of complainant and witnesses.

703. (§ 22.) If it appears from the depositions that there is just reason to fear the commission of the offense threatened, by the person so informed against, the magistrate must issue a warrant, directed generally to the Sheriff of the county, or any Constable, Marshal, or Policeman in the State, reciting the substance of the information, and commanding the officer forthwith to arrest the person informed of and bring him before the magistrate. Warrant of arrest.

Proceed-
ings on
charges
being con-
troverted.

704. (§ 23.) When the person informed against is brought before the magistrate, if the charge be controverted, the magistrate must take testimony in relation thereto. The evidence must be reduced to writing and subscribed by the witnesses.

Person
complained
of, when
to be
discharged.

705. (§ 24.) If it appears that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged.

Security
to keep
the peace,
when
required.

706. (§ 25.) If, however, there is just reason to fear the commission of the offense, the person complained of may be required to enter into an undertaking in such sum, not exceeding five thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to keep the peace towards the people of this State, and particularly towards the informer. The undertaking is valid and binding for six months, and may, upon the renewal of the information, be extended for a longer period, or a new undertaking may be required.

Effect of
giving or
refusing
to give
security.

707. (§ 26.) If the undertaking required by the last section is given, the party informed of must be discharged. If he does not give it, the magistrate must commit him to prison, specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

Person
committed
for not
giving
security,
how
discharged.

708. (§ 27.) If the person complained of is committed for not giving the undertaking required, he may be discharged by any magistrate, upon giving the same.

Undertak-
ing to be
filed in
Clerk's
office.

709. (§ 28.) The undertaking must be filed by the magistrate in the office of the Clerk of the county.

710. (§ 29.) A person who, in the presence of a Court or magistrate, assaults or threatens to assault

another, or to commit an offense against his person or property, or who contends with another with angry words, may be ordered by the Court or magistrate to give security, as in this Chapter provided, and if he refuse to do so, may be committed as provided in Section 707.

Security, when required for assault committed in the presence of a Court or magistrate

711. Upon the conviction of the person informed against of a breach of the peace, the undertaking is broken.

Undertaking, when broken.

712. (§ 31.) Upon the District Attorney's producing evidence of such conviction to the County Court of the County, the Court must order the undertaking to be prosecuted, and the District Attorney must thereupon commence an action upon it in the name of the people of this State.

Undertaking, when and how to be prosecuted

713. (§ 32.) In the action the offense stated in the record of conviction must be alleged as a breach of the undertaking, and such record is conclusive evidence of the breach.

Evidence of breach.

714. (§ 33.) Security to keep the peace, or be of good behavior, cannot be required except as prescribed in this Chapter.

Security for the peace not required, except in accordance with this Chapter.

CHAPTER IV.

POLICE IN CITIES AND TOWNS, AND THEIR ATTENDANCE AT EXPOSED PLACES.

SECTION 719. Organization and regulation of the police.

720. Force to preserve the peace at public meetings, when and how ordered.

719. (§ 34.) The organization and regulation of the police, in the cities and towns of this State, is governed by special laws.

Organization and regulation of the police.

Force to
preserve
the peace
at public
meetings,
when
and how
ordered.

720. (§ 35.) The Mayor or other officer having the direction of the police of a city or town must order a force, sufficient to preserve the peace, to attend any public meeting, when he is satisfied that a breach of the peace is reasonably apprehended.

CHAPTER V.

SUPPRESSION OF RIOTS.

SECTION 723. Power of Sheriff or other officer in overcoming resistance to process.

724. The officer to certify to Court the name of the resisters, etc.

725. When Governor to order out a military force to aid in executing process.

726. Magistrates and officers to command rioters to disperse.

727. To arrest rioters if they do not disperse.

728. Officers who may order out the military.

729. Commanding officer and troops to obey the order.

730. Armed force to obey orders of whom.

731. Conduct of the troops.

732. Governor may in certain cases declare a county in a state of insurrection.

733. May revoke the proclamation.

Power of
Sheriff or
other
officer in
overcoming
resistance
to process.

723. (§ 36.) When a Sheriff or other public officer authorized to execute process finds, or has reason to apprehend that resistance will be made to the execution of the process, he may command as many male inhabitants of his county as he may think proper to assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining the persons resisting, their aiders and abettors.

The officer
to certify to
Court the
name of the
resisters,
etc.

724. (§ 37.) The officer must certify to the Court from which the process issued the names of the persons resisting, and their aiders and abettors, to the end that they may be proceeded against for their contempt of Court.

725. If it appears to the Governor that the civil power of any county is not sufficient to enable the Sheriff to execute process delivered to him, he must, upon the application of the Sheriff of the county, order such portion as shall be sufficient, or the whole, if necessary, of the organized National Guard or enrolled militia of the State, to proceed to the assistance of the Sheriff.

When Governor to order out a military force to aid in executing process.

726. Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the Sheriff of the county and his deputies, the officials governing the town or city, or the Justices of the Peace and Constables thereof, or any of them, must go among the persons assembled, or as near to them as possible, and command them, in the name of the people of the State, immediately to disperse.

Magistrates and officers to command rioters to disperse.

727. (§§ 41, 42.) If the persons assembled do not immediately disperse, such magistrates and officers must arrest them, and to that end may command the aid of all persons present or within the county.

To arrest rioters if they do not disperse.

728. When there is an unlawful or riotous assembly with the intent to commit a felony or to offer violence to person or property, or to resist by force the laws of the State or of the United States, and the fact is made known to the Governor, or to any Justice of the Supreme Court, or to the District Judge of that judicial district, or to the County Judge, or Sheriff of the county, or to the Mayor of a city, or to the President of the Board of Supervisors of the cities and counties of Sacramento and San Francisco, either of those officers may issue an order directed to the commanding officer of a division or brigade of the organized National Guard or enrolled militia of the State, to order his command, or such part thereof as may be necessary, into active service, and to appear at a time and place therein specified to aid the civil authorities in suppressing violence and enforcing the laws.

Officers who may order out the military.

Command-
ing officer
and troops
to obey the
order.

729. The organized National Guard or enrolled militia, or such portion thereof as shall be called into active service, as provided in Section 728, must appear at the time and place appointed, fully armed and equipped, and with not less than forty rounds of ball cartridge to each man, if infantry or cavalry, and with not less than twenty rounds of grape canister or round shot, if artillery.

Armed
force to
obey orders
of whom.

730. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, or arresting the offenders, and is placed under the temporary direction of any civil officer, as provided in Section 731, it must obey the orders in relation thereto of such civil officer.

Conduct of
the troops.

731. Whenever any portion of the National Guard, or enrolled militia, shall have been called into active service to suppress an insurrection or rebellion, to disperse a mob, or to enforce the execution of the laws of this State or of the United States, it shall be competent for the Commander in Chief, or for the General acting in his stead, to place such troops under the temporary direction of the Mayor of any city, or of the President of the Board of Supervisors of the Cities and Counties of Sacramento and San Francisco, or the person acting in that capacity, of the Sheriff of any county, or of any Marshal of the United States; and if, in the opinion of such civil officer, it shall become necessary that the troops so called out shall fire or charge upon any mob or body of persons assembled to break or resist the laws, such civil officer shall give a written order to that effect to the superior officer present in command of such troops, who will at once proceed to carry out the order, and shall direct the firing and attack to cease only when such mob or unlawful assembly shall have been dispersed, or when ordered to do so by the proper civil authority. No

officer who has been called out to sustain the civil Same. authorities shall, under any pretense, or in compliance with any order, fire blank cartridges upon any mob or unlawful assemblage, under penalty of being cashiered by sentence of a Court martial; provided, that nothing in this section shall be construed as prohibiting any such troops from firing or charging upon such mob or assembly without the orders of such civil officers, in case they shall first be attacked or fired upon, or forcibly resisted in discharge of their duty. When the Commander in Chief, or General acting in his stead, shall call troops into active service for the purposes mentioned in this section, and shall not place them under the temporary direction of any civil officer, the commanding officer shall use his own discretion with respect to the propriety of attacking or firing upon any mob or unlawful assembly.

732. When the Governor is satisfied that the execution of civil or criminal process has been forcibly resisted in any county by bodies of men, or that combinations to resist the execution of process by force exist in any county, and that the power of the county has been exerted and has not been sufficient to enable the officers having the process to execute it, he may, on the application of the officer, or of the District Attorney or County Judge of the county, by proclamation published in such papers as he may direct, declare the county to be in a state of insurrection, and may order into the service of the State such number and description of the organized National Guard or volunteer uniformed companies, or other militia of the State as he deems necessary, to serve for such term and under the command of such officer as he may direct.

Governor may in certain cases declare a county in a state of insurrection.

733. (§ 49.) The Governor may, when he thinks proper, revoke the proclamation authorized by the

May revoke the proclamation.

last section, or declare that it shall cease at the time and in the manner directed by him.

TITLE II.

OF JUDICIAL PROCEEDINGS FOR THE REMOVAL OF PUBLIC OFFICERS BY IMPEACHMENT OR OTHERWISE.

CHAPTER I. *Of impeachments.*

II. *Of the removal of civil officers otherwise than by impeachment.*

CHAPTER I.

OF IMPEACHMENTS.

SECTION 737. Officers liable to impeachment.

738. Articles, how prepared. Trial by Senate.

739. Articles of impeachment.

740. Time of hearing. Service on defendant.

741. Service, how made.

742. Proceedings on failure to appear.

743. Defendant, after appearance, may answer or demur.

744. If demurrer is overruled defendant must answer.

745. Senate to be sworn.

746. Two thirds necessary to a conviction.

747. Judgment on conviction, how pronounced.

748. The same.

749. Nature of the judgment.

750. Effect of judgment of suspension.

751. Officer, when impeached, disqualified until acquitted.

Governor to temporarily fill vacancy.

752. Presiding officer when Lieutenant Governor is impeached.

753. Impeachment not a bar to indictment.

Officers
liable to
impeach-
ment.

737. (§ 51.) The Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, Attorney General, Surveyor General, Justices of the Supreme Court, and Judges of the District Courts, are liable to impeachment for any misdemeanor in office.

738. (§ 52.) All impeachments must be by resolution adopted, originated in, and conducted by managers elected by the Assembly, who must prepare articles of impeachment, present them at the bar of the Senate, and prosecute the same. The trial must be had before the Senate, sitting as a Court of impeachment.

Articles,
how
prepared.

Trial by
Senate.

739. (§ 53.) When an officer is impeached by the Assembly for a misdemeanor in office, the articles of impeachment must be delivered to the President of the Senate.

Articles of
impeach-
ment.

740. (§ 54.) The Senate must assign a day for the hearing of the impeachment and inform the Assembly thereof. The President of the Senate must cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed, to be served on the defendant not less than ten days before the day fixed for the hearing.

Time of
hearing.

Service on
defendant.

741. (§ 55.) The service must be made upon the defendant personally, or if he cannot, upon diligent inquiry, be found within the State, the Senate, upon proof of that fact, may order publication to be made, in such manner as it may deem proper, of a notice requiring him to appear at a specified time and place and answer the articles of impeachment.

Service,
how made.

742. (§ 56.) If the defendant does not appear, the Senate, upon proof of service or publication, as provided in the two last sections, may, of its own motion or for cause shown, assign another day for hearing the impeachment, or may proceed, in the absence of the defendant, to trial and judgment.

Proceed-
ings on
failure to
appear.

743. (§ 57.) When the defendant appears, he may in writing object to the sufficiency of the articles of impeachment, or he may answer the same by an oral

Defendant,
after
appear-
ance, may
answer or
demur.

plea of not guilty, which plea must be entered upon the journal, and puts in issue every material allegation of the articles of impeachment.

If demur-
rer is
overruled
defendant
must
answer.

744. (§§ 58, 59.) If the objection to the sufficiency of the articles of impeachment is not sustained by a majority of the members of the Senate who heard the argument, the defendant must be ordered forthwith to answer the articles of impeachment. If he then pleads guilty, or refuses to plead, the Senate must render judgment of conviction against him. If he plead not guilty, the Senate must, at such time as it may appoint, proceed to try the impeachment.

Senate to
be sworn.

745. (§ 60.) At the time and place appointed, and before the Senate proceeds to act on the impeachment, the Secretary must administer to the President of the Senate, and the President of the Senate to each of the members of the Senate then present, an oath truly and impartially to hear, try, and determine the impeachment; and no member of the Senate can act or vote upon the impeachment, or upon any question arising thereon, without having taken such oath.

Two thirds
necessary
to a
conviction.

746. (§ 62.) The defendant cannot be convicted on an impeachment without the concurrence of two thirds of the members present, voting by ayes and noes; and if two thirds of the members present do not concur in a conviction, he must be acquitted.

Judgment
on convic-
tion, how
pronounced

747. (§ 63.) After conviction the Senate must, at such time as it may appoint, pronounce judgment, in the form of a resolution entered upon the journals of the Senate.

Same.

748. (§ 64.) On the adoption of the resolution by a majority of the members present who voted on the question of acquittal or conviction, it becomes the judgment of the Senate.

749. (§ 65.) The judgment may be that the defendant be suspended and removed from office, or that he be removed from office and disqualified to hold and enjoy a particular office, or class of offices, or any office in this State.

Nature
of the
judgment.

750. (§ 66.) If judgment of suspension is given, the defendant, during the continuance thereof, is disqualified from receiving the salary, fees, or emoluments of the office.

Effect of
judgment
of
suspension

751. (§ 67.) Whenever articles of impeachment against any officer subject to impeachment are presented to the Senate, such officer is temporarily suspended from his office, and cannot act in his official capacity until he is acquitted. Upon such suspension of any officer other than the Governor, his office must at once be temporarily filled by an appointment made by the Governor, with the advice and consent of the Senate, until the acquittal of the party impeached; or, in case of his removal, until the vacancy is filled at the next election, as required by law.

Officer,
when
impeached,
disqualified
until
acquitted.

Governor to
temporarily
fill
vacancy.

752. (§ 68.) If the Lieutenant Governor is impeached, notice of the impeachment must be immediately given to the Senate by the Assembly, that another President may be chosen.

Presiding
officer
when
Lieutenant
Governor is
impeached.

753. (§ 69.) If the offense for which the defendant is convicted on impeachment is also the subject of an indictment, the indictment is not barred thereby.

Impeach-
ment not
a bar to
indictment.

CHAPTER II.

OF THE REMOVAL OF CIVIL OFFICERS OTHERWISE THAN BY IMPEACHMENT.

SECTION 758. Accusation to be presented by the Grand Jury.

759. Form of accusation.

SECTION 760. To be transmitted to the District Attorney, and copy served on the defendant.

761. Proceedings if defendant does not appear.

762. Defendant may object to or deny the accusation.

763. Form of objection.

764. Manner of denial.

765. If objections overruled, defendant must answer.

766. Proceedings upon plea of guilty, refusal to answer, or denial.

767. Trial by jury.

768. State and defendant entitled to process for witnesses.

769. Judgment upon conviction, and its form.

770. Appeal, how taken. Pending appeal, defendant to be suspended and vacancy filled.

771. Proceedings for the removal of a District Attorney.

772. Removal of public officers by summary proceedings before District Courts.

Accusation
to be
presented
by the
Grand Jury

758. (§ 70.) An accusation in writing against any district, county, township, or municipal officer, for willful or corrupt misconduct in office, may be presented by the Grand Jury of the county for or in which the officer accused is elected or appointed.

Form of
accusation.

759. (§ 71.) The accusation must state the offense charged, in ordinary and concise language, and without repetition.

To be
transmit-
ted to the
District
Attorney,
and copy
served
on the
defendant.

760. (§ 72.) The accusation must be delivered by the foreman of the Grand Jury to the District Attorney of the county, except when he is the officer accused, who must cause a copy thereof to be served upon the defendant, and require, by notice in writing of not less than ten days, that he appear before the District Court of the county, at its next term, and answer the accusation. The original accusation must then be filed with the Clerk of the District Court.

Proceed-
ings if
defendant
does not
appear.

761. (§ 73.) The defendant must appear at the time appointed in the notice and answer the accusation, unless for some sufficient cause the Court assign another day for that purpose. If he does not appear,

the Court may proceed to hear and determine the accusation in his absence.

762. (§ 74.) The defendant may answer the accusation either by objecting to the sufficiency thereof, or of any article therein, or by denying the truth of the same.

Defendant may object to or deny the accusation.

763. (§ 75.) If he objects to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it presents intelligibly the grounds of the objection.

Form of objection.

764. (§ 76.) If he denies the truth of the accusation, the denial may be oral and without oath, and must be entered upon the minutes.

Manner of denial.

765. (§ 77.) If an objection to the sufficiency of the accusation is not sustained, the defendant must answer thereto forthwith.

If objections overruled, defendant must answer.

766. (§ 78.) If the defendant pleads guilty, or refuses to answer the accusation, the Court must render judgment of conviction against him. If he denies the matters charged, the Court must immediately, or at such time as it may appoint, proceed to try the accusation.

Proceedings upon plea of guilty, refusal to answer, or denial.

767. (§ 79.) The trial must be by a jury, and conducted in all respects in the same manner as the trial of an indictment for a misdemeanor.

Trial by jury.

768. (§ 80.) The District Attorney and the defendant are respectively entitled to such process as may be necessary to enforce the attendance of witnesses as upon a trial of an indictment.

State and defendant entitled to process for witnesses.

769. (§ 81.) Upon a conviction, the Court must, at such time as it may appoint, pronounce judgment that the defendant be removed from office; but, to warrant a removal, the judgment must be entered

Judgment upon conviction, and its form.

upon the minutes, and the causes of removal must be assigned therein.

Appeal,
how taken.

770. (§ 82.) From a judgment of removal an appeal may be taken to the Supreme Court, in the same manner as from a judgment in a civil action; but until such judgment is reversed the defendant is suspended from his office. Pending the appeal, the office must be filled as in case of a vacancy.

Pending
appeal,
defendant
to be
suspended
and
vacancy
filled.

Proceed-
ings for the
removal of
a District
Attorney.

771. (§ 83.) The same proceedings may be had on like grounds for the removal of a District Attorney, except that the accusation must be delivered by the foreman of the Grand Jury to the Clerk, and by him to the District Judge of the district, who must thereupon appoint some one to act as prosecuting officer in the matter, or place the accusation in the hands of the District Attorney of an adjoining county, and require him to conduct the proceedings.

Removal
of public
officers by
summary
proceed-
ings before
District
Courts.

772. When an information in writing verified by the oath of any person, is presented to a District Court, alleging that any officer within the jurisdiction of the Court has been guilty of charging and collecting illegal fees for services rendered or to be rendered in his office, or has refused or neglected to perform the official duties pertaining to his office, the Court must cite the party charged to appear before the Court at a time not more than ten nor less than five days from the time the information was presented, and on that day or some other subsequent day, not more than twenty days from that on which the information was presented, must proceed to hear, in a summary manner, the information and evidence offered in support of the same, and the answer and evidence offered by the party informed against; and if on such hearing it appears that the charge is sustained, the Court must enter a decree that the party informed

against be deprived of his office, and must enter a judgment for five hundred dollars in favor of the informer, and such costs as are allowed in civil cases.

TITLE III.

OF THE PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT, TO THE COMMITMENT, INCLUSIVE.

CHAPTER I. *Of the local jurisdiction of public offenses.*

II. *Of the time of commencing criminal actions.*

III. *The information.*

IV. *The warrant of arrest.*

V. *Arrest, by whom and how made.*

VI. *Retaking after an escape or rescue.*

VII. *Examination of the case and discharge of defendant, or holding him to answer.*

CHAPTER I.

OF THE LOCAL JURISDICTION OF PUBLIC OFFENSES.

SECTION 777. Jurisdiction of offenses committed in this State.

778. When the offense is commenced without, but consummated within this State.

779. When an inhabitant of this State is concerned in a duel out of the same, and a party wounded dies therein.

780. When an inhabitant leaves the State to evade the statute against dueling or challenges to fight.

781. When an offense is committed partly in one county and partly in another.

782. When committed on the boundary, etc., of two or more counties.

783. Jurisdiction of an offense on board a vessel.

784. Of indictment for kidnapping, enticing away a child, or abduction.

785. Jurisdiction of an indictment for bigamy or incest.

SECTION 786. When property is feloniously taken in one county and brought into another.

787. Jurisdiction of indictment for escaping from prison.

788. Jurisdiction of an indictment for treason, when the overt act is committed out of the State.

789. Jurisdiction of an indictment for stealing, etc., property out of this State and bringing it therein.

790. Jurisdiction of an indictment for murder, etc., where the injury was inflicted in one county, and the party dies out of that county.

791. Of an indictment against an accessory.

792. Jurisdiction in cases of principals who are not present, etc., at commission of the principal offense.

793. Conviction or acquittal in another State a bar, where the jurisdiction is concurrent.

794. Conviction or acquittal in another county a bar, where the jurisdiction is concurrent.

Jurisdiction of offenses committed in this State.

777. (§ 84.) Every person is liable to punishment by the laws of this State, for a public offense committed by him therein, except where it is by law cognizable exclusively in the Courts of the United States.

When the offense is commenced without, but consummated within this State.

778. (§ 85.) When the commission of a public offense, commenced without the State, is consummated within its boundaries, the defendant is liable to punishment therefor in this State, though he was out of the State at the time of the commission of the offense charged. If he consummated it in this State, through the intervention of an innocent or guilty agent, or any other means proceeding directly from himself, in such case the jurisdiction is in the county in which the offense is consummated.

When an inhabitant of this State is concerned in a duel out of the State, and a party wounded dies therein

779. (§ 86.) When an inhabitant or resident of this State, by previous appointment or engagement, fights a duel or is concerned as second therein, out of the jurisdiction of this State, and in the duel a wound is inflicted upon a person, whereof he dies in this State, the jurisdiction of the offense is in the county where the death happens.

780. When an inhabitant of this State leaves the same for the purpose of evading the operation of the provisions of the Code relating to dueling and challenges to fight, with the intent or for the purpose of doing any of the acts prohibited therein, the jurisdiction is in the county of which the offender was an inhabitant when the offense was committed.

When an inhabitant leaves the State to evade the statute against dueling or challenges to fight.

781. (§ 87.) When a public offense is committed in part in one county and in part in another, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, the jurisdiction is in either county.

When an offense is committed partly in one county and partly in another.

782. (§ 88.) When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county.

When committed on the boundary, etc., of two or more counties.

783. (§ 89.) When an offense is committed in this State, on board a vessel navigating a river, bay, slough, lake, or canal, or lying therein in the prosecution of her voyage, the jurisdiction is in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage terminates.

Jurisdiction of an offense on board a vessel.

784. (§ 90.) The jurisdiction of an indictment:

1. For forcibly and without lawful authority seizing and confining another, or inveigling or kidnapping him with intent, against his will, to cause him to be secretly confined or imprisoned in this State, or to be sent out of the State, or from one county to another, or to be sold as a slave, or in any way held to service; or,

Of indictment for kidnapping, enticing away a child, or abduction.

2. For decoying, taking, or enticing away a child under the age of twelve years, with intent to detain

Same.

and conceal it from its parent, guardian, or other person having the lawful charge of the child; or,

3. For inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of twenty-five years, for the purpose of prostitution; or,

4. For taking away any female under the age of sixteen years, from her father, mother, guardian, or other person having the legal charge of her person, without their consent, either for the purpose of concubinage or prostitution;

—Is in the county in which the offense is committed, or out of which the person upon whom the offense was committed may, in the commission of the offense, have been brought, or in which an act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense, or in abetting the parties concerned therein.

Jurisdiction of an indictment for bigamy or incest.

785. (§ 91.) When the offense, either of bigamy or incest, is committed in one county and the defendant is apprehended in another, the jurisdiction is in either county.

When property is feloniously taken in one county and brought into another.

786. (§ 92.) When property taken in one county by burglary, robbery, larceny, or embezzlement, has been brought into another, the jurisdiction of the offense is in either county. But if at any time before the conviction of the defendant in the latter, he is indicted in the former county, the Sheriff of the latter county must, upon demand, deliver him to the Sheriff of the former.

Jurisdiction of indictment for escaping from prison.

787. The jurisdiction of an indictment for escaping from prison is in any county of the State.

Jurisdiction of an indictment for treason committed out of the State.

788. The jurisdiction of an indictment for treason, when the overt act is committed out of the State, is in any county of the State.

789. The jurisdiction of an indictment for stealing in any other State the property of another, or receiving it, knowing it to have been stolen, and bringing the same into this State, is in any county into or through which such stolen property has been brought.

Jurisdiction of an indictment for stealing, etc., property out of this State and bringing it therein.

790. The jurisdiction of an indictment for murder or manslaughter, when the injury which caused the death was inflicted in one county and the party injured dies in another county, or out of the State, is in the county where the injury was inflicted.

Jurisdiction of an indictment for murder, etc., where injury was inflicted in one county, and the party dies out of that county.

791. (§ 93.) In the case of an accessory in the commission of a public offense, the jurisdiction is in the county where the offense of the accessory was committed, notwithstanding the principal offense was committed in another county.

Of an indictment against an accessory.

792. The jurisdiction of an indictment against a principal in the commission of a public offense, when such principal is not present at the commission of the principal offense, is in the same county it would be under this Code if he were so present and aiding and abetting therein.

Jurisdiction in cases of principals who are not present, etc., at commission of the principal offense.

793. (§ 94.) When an act charged as a public offense is within the jurisdiction of another State or country, as well as of this State, a conviction or acquittal thereof in the former is a bar to the prosecution or indictment therefor in this State.

Conviction or acquittal in another State a bar, where the jurisdiction is concurrent.

794. (§ 95.) When an offense is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment therefor in another.

Conviction or acquittal in another county a bar, where the jurisdiction is concurrent.

CHAPTER II.

OF THE TIME OF COMMENCING CRIMINAL ACTIONS.

SECTION 799. Prosecution for murder may be commenced at any time.

800. Limitation of three years in all other felonies.

801. Limitation of one year in misdemeanors.

802. Exception when defendant is out of the State.

803. Indictment found, when presented and filed.

Prosecution for murder may be commenced at any time.

799. (§ 96.) There is no limitation of time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

Limitation of three years in all other felonies.

800. (§ 97.) An indictment for any other felony than murder must be found within three years after its commission.

Limitation of one year in misdemeanors.

801. (§ 98.) An indictment for any misdemeanor must be found within one year after its commission.

Exception when defendant is out of the State.

802. (§ 99.) If, when the offense is committed, the defendant is out of the State, the indictment may be found within the term herein limited after his coming within the State, and no time during which the defendant is not an inhabitant of, or usually resident within the State, is part of the limitation.

Indictment found, when presented and filed.

803. (§ 100.) An indictment is found, within the meaning of this Chapter, when it is presented by the Grand Jury in open Court, and there received and filed.

CHAPTER III.

THE INFORMATION.

SECTION 806. Information defined.

807. Magistrate defined.

808. Who are magistrates.

806. (§ 101.) The information is the allegation in writing made to a magistrate that a person has been guilty of some designated offense. Information defined

807. (§ 102.) A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense. Magistrate defined.

808. (§ 103.) The following persons are magistrates: Who are magistrates

1. The Justices of the Supreme Court;
2. The District Judges;
3. The County Judges;
4. The Judge of the Municipal Criminal Court of San Francisco;
5. Justices of the Peace;
6. Police magistrates in towns or cities.

CHAPTER IV.

THE WARRANT OF ARREST.

SECTION 811. Examination of the prosecutor and his witnesses upon the information.

812. Depositions, what to contain.

813. When warrant may issue.

814. Form of warrant.

815. Name or description of the defendant in the warrant, and statement of the offense.

816. Warrant to be directed to and executed by peace officer.

817. Who are peace officers.

818. To what peace officers warrants are to be directed.

819. Same; and when and how executed in another county.

820. Indorsement on the warrant, for service in another county, how and upon what proof to be made.

821. Defendant to be taken before the magistrate issuing the warrant, etc.

822. Defendant arrested for misdemeanor in another county, to be admitted to bail.

823. Proceedings on taking bail from the defendant in such cases.

SECTION 824. When bail is not given. When magistrate who issued warrant cannot act.

825. No delay in taking defendant before magistrate.

826. Proceedings where defendant is taken before another magistrate.

827. Proceedings for offenses triable in another county.

828. Duty of officer.

829. Admission to bail.

Examination of the prosecutor and his witnesses upon the information.

811. (§ 104.) When an information is laid before a magistrate of the commission of a public offense, triable within the county, he must examine on oath the informant or prosecutor, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

Depositions, what to contain.

812. (§ 105.) The deposition must set forth the facts stated by the prosecutor and his witnesses, tending to establish the commission of the offense and the guilt of the defendant.

When warrant may issue.

813. (§ 106.) If the magistrate is satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, he must issue a warrant of arrest.

Form of warrant.

814. (§ 107.) A warrant of arrest is an order in writing, in the name of the people, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form :

COUNTY OF —.

The People of the State of California to any Sheriff, Constable, Marshal, or Policeman of said State, or of the County of — :

Information on oath having been this day laid before me, by A. B., that the crime of — (designating it) has been committed, and accusing C. D. thereof, you are therefore commanded forthwith to arrest the above named C. D. and bring him before me at (naming the place), or in case of my absence or inability to act,

before the nearest or most accessible magistrate in this county.

Dated at —, this — day of —, eighteen —.

815. (§ 108.) The warrant must specify the name of the defendant, or, if it is unknown to the magistrate, the defendant may be designated therein by any name. It must also state the time of issuing it, and the county, city, or town where it is issued, and be signed by the magistrate, with his name of office.

Name or description of the defendant in the warrant, and statement of the offense.

816. (§ 109.) The warrant must be directed to and executed by a peace officer.

Warrant to be directed to and executed by peace officer.

817. (§ 110.) A peace officer is a Sheriff of a county, or a Constable, Marshal, or Policeman of a township, city, or town.

Who are peace officers.

818. (§ 111.) If a warrant is issued by a Justice of the Supreme Court, District Judge, County Judge, or Judge of the Municipal Criminal Court of San Francisco, it may be directed generally to any Sheriff, Constable, Marshal, or Policeman in the State, and may be executed by any of those officers to whom it may be delivered.

To what peace officers warrants are to be directed.

819. (§ 112.) If it is issued by any other magistrate, it may be directed generally to any Sheriff, Constable, Marshal, or Policeman in the county in which it is issued, and may be executed in that county; or, if the defendant is in another county, it may be executed therein upon the written direction of a magistrate of that county, indorsed upon the warrant, signed by him, with his name of office, and dated at the county, city, or town where it is made, to the following effect: "This warrant may be executed in the County of —" (naming the county.)

Same; and when and how executed in another county.

820. (§ 113.) The indorsement mentioned in the last section cannot, however, be made, unless the war-

Indorsement on the warrant, for service in another county, how and upon what proof to be made.

warrant of arrest be accompanied with a certificate of the Clerk of the county where such warrant was issued, under the seal of the County Court thereof, as to the official character of the magistrate; or unless upon the oath of a credible witness, in writing, indorsed on or annexed to the warrant, proving the handwriting of the magistrate by whom it was issued. Upon such proof, the magistrate indorsing the warrant is exempted from liability to a civil or criminal action, though it afterwards appear that the warrant was illegally or improperly issued.

Defendant to be taken before the magistrate issuing the warrant, etc.

821. (§ 114.) If the offense charged is a felony, the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided in Section 824.

Defendant arrested for misdemeanor in another county, to be admitted to bail.

822. (§ 115.) If the offense charged is a misdemeanor, and the defendant is arrested in another county, the officer must, upon being required by the defendant, take him before a magistrate in that county, who must admit the defendant to bail, and take bail from him accordingly.

Proceedings on taking bail from the defendant in such cases.

823. (§ 116.) On taking the bail, the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant. The officer must then discharge the defendant from arrest, and must, without delay, deliver the warrant and undertaking to the Clerk of the Court at which the defendant is required to appear.

When bail is not given. When magistrate who issued warrant cannot act.

824. (§§ 117, 118.) If, on the admission of the defendant to bail, the bail is not forthwith given, the officer must take the defendant before the magistrate who issued the warrant, or, in case of his absence or inability to act, before the nearest or most accessible

magistrate in the same county, and must at the same time deliver to the magistrate the warrant, with his return thereon indorsed and subscribed by him.

825. (§ 119.) The defendant must in all cases be taken before the magistrate without unnecessary delay.

No delay
in taking
defendant
before
magistrate

826. (§ 120.) If the defendant is brought before a magistrate other than the one who issued the warrant, the depositions on which the warrant was granted must be sent to that magistrate, or, if they cannot be procured, the prosecutor and his witnesses must be summoned to give their testimony anew.

Proceed-
ings where
defendant
is taken
before
another
magistrate

827. (§ 121.) When an information is laid before a magistrate of the commission of a public offense triable in another county of the State, but showing that the defendant is in the county where the information is laid, the same proceedings must be had as prescribed in this Chapter, except that the warrant must require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offense is triable, and the depositions of the informant or prosecutor, and of the witnesses who may have been produced, must be delivered by the magistrate to the officer to whom the warrant is delivered.

Proceed-
ings for
offenses
triable in
another
county.

828. (§ 122.) The officer who executes the warrant must take the defendant before the nearest or most accessible magistrate of the county in which the offense is triable, and must deliver to him the depositions and the warrant, with his return indorsed thereon, and the magistrate must then proceed in the same manner as upon a warrant issued by himself.

Duty of
officer.

829. (§ 123.) If the offense charged in the warrant issued pursuant to Section 827 is a misdemeanor, the officer must, upon being required by the defend-

Admission
to bail.

ant, take him before a magistrate of the county in which the warrant was issued, who must admit the defendant to bail, and immediately transmit the warrant, depositions, and undertaking, to the Clerk of the Court in which the defendant is required to appear.

CHAPTER V.

ARREST, BY WHOM AND HOW MADE.

SECTION 834. Arrest defined. By whom made.

835. How an arrest is made and what restraint allowed.

836. Arrests by peace officers.

837. Arrests by private persons.

838. Magistrates may order arrest.

839. Persons making arrest may summon assistance.

840. When the arrest may be made.

841. Arrest, how made.

842. Warrant must be shown, when.

843. What force may be used.

844. Doors and windows may be broken, when.

845. Same.

846. Weapons may be taken from persons arrested.

847. Duty of a private person who has made an arrest.

848. Duty of officer arresting with warrant.

849. Person arrested without a warrant to be taken before a magistrate. Information to be filed.

850. Arrest by telegraph.

851. Same.

Arrest
defined.
By whom
made.

834. An arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person.

How an
arrest
is made
and what
restraint
allowed.

835. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of an officer. The defendant must not be subjected to any more restraint than is necessary for his arrest and detention.

836. A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person:

Arrests by
peace
officers.

1. For a public offense committed or attempted in his presence.

2. When a person arrested has committed a felony, although not in his presence.

3. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

4. On a charge made, upon a reasonable cause, of the commission of a felony by the party arrested.

5. At night, when there is reasonable cause to believe that he has committed a felony.

837. A private person may arrest another:

1. For a public offense committed or attempted in his presence.

Arrests by
private
persons.

2. When the person arrested has committed a felony, although not in his presence.

3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

838. A magistrate may orally order a peace officer or private person to arrest any one committing or attempting to commit a public offense in the presence of such magistrate.

Magis-
trates may
order
arrest.

839. Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein.

Persons
making
arrest may
summon
assistance.

840. If the offense charged is a felony, the arrest may be made on any day, and at any time of the day or night. If it is a misdemeanor, the arrest cannot be made at night, unless upon the direction of the magistrate, indorsed upon the warrant.

When the
arrest may
be made.

Arrest,
how made.

841. The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or is pursued immediately after its commission, or after an escape.

Warrant
must be
shown,
when.

842. If the person making the arrest is acting under the authority of a warrant, he must show the warrant, if required.

What force
may be
used.

843. When the arrest is being made by an officer under the authority of a warrant, after information of the intention to make the arrest, if the person to be arrested either flees or forcibly resists, the officer may use all necessary means to effect the arrest.

Doors and
windows
may be
broken,
when.

844. To make an arrest, if the offense is a felony, a private person, if any public offense, a peace officer, may break open the door or window in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired.

Same.

845. Any person who has lawfully entered a house for the purpose of making an arrest, may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself, and an officer may do the same, when necessary for the purpose of liberating a person who, acting in his aid, lawfully entered for the purpose of making an arrest, and is detained therein.

Weapons
may be
taken from
persons
arrested.

846. Any person making an arrest may take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken.

847. A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him to a peace officer.

Duty of a private person who has made an arrest.

848. An officer making an arrest, in obedience to a warrant, must proceed with the person arrested as commanded by the warrant, or as provided by law.

Duty of officer arresting with warrant.

849. When an arrest is made without a warrant by a peace officer or private person, the person arrested must, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the arrest is made, and an information, stating the charge against the person, must be laid before such magistrate.

Person arrested without a warrant to be taken before a magistrate

Information to be filed.

850. A Justice of the Supreme Court, District or County Judge, or the Judge of the Municipal Criminal Court of San Francisco, may, by an indorsement under his hand upon a warrant of arrest, authorize the service thereof by telegraph, and thereafter a telegraphic copy of such warrant may be sent by telegraph to one or more peace officers, and such copy is as effectual in the hands of any officer; and he must proceed in the same manner under it as though he held an original warrant issued by the magistrate making the indorsement.

Arrest by telegraph.

851. Every officer causing telegraphic copies of warrants to be sent, must certify as correct, and file in the telegraph office from which such copies are sent, a copy of the warrant and indorsement thereon, and must return the original with a statement of his action thereunder.

Same.

CHAPTER VI.

RETAKEING AFTER AN ESCAPE OR RESCUE.

SECTION 854. May be at any time or in any place in the State.

855. May break open door or window if admittance refused.

May be at
any time
or in any
place in
the State.

854. (§ 144.) If a person arrested escape or is rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him, at any time and in any place within the State.

May break
open door
or window
if
admittance
refused.

855. (§ 145.) To retake the person escaping or rescued, the person pursuing may break open an outer or inner door or window of a dwelling house, if, after notice of his intention, he is refused admittance.

CHAPTER VII.

EXAMINATION OF THE CASE, AND DISCHARGE OF THE DEFENDANT, OR HOLDING HIM TO ANSWER.

SECTION 858. Magistrate to inform the defendant of the charge, and his right to counsel.

859. Time to send and sending for counsel.

860. Examination, when to proceed.

861. When to be completed. Postponement.

862. On postponement, defendant to be committed or discharged on bail.

863. Form of commitment.

864. Depositions to be read on examination and subpoenas issued.

865. Examination of witnesses to be in presence of defendant, and his right to cross-examine.

866. Examination of defendant's witnesses.

867. Exclusion and separation of witnesses.

868. Who may be present at the examination.

869. Testimony, how taken and authenticated.

870. Deposition, by whom and how kept.

871. Defendant, when and how discharged.

872. When and how to be committed.

873. Order for commitment.

874. Certificate of bail being taken.

SECTION 875. Order for bail on commitment.

876. Commitment, how made and to whom delivered.

877. Form of commitment.

878. Undertaking of witnesses to appear, when and how taken.

879. Security for the appearance of witnesses, when and how required.

880. Infants and married women may be required to give security.

881. Witnesses to be committed on refusal to give security for their appearance.

882. Witness unable to give security may be conditionally examined. Not applicable to prosecutor or accomplice.

883. Magistrate to return depositions, etc., to the Court.

858. (§ 146.) When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings.

Magistrate to inform the defendant of the charge, and his right to counsel.

859. (§ 147.) He must also allow the defendant a reasonable time to send for counsel, and postpone the examination for that purpose, and must, upon the request of the defendant, require a peace officer to take a message to any counsel in the township or city the defendant may name. The officer must, without delay and without fee, perform that duty.

Time to send and sending for counsel.

860. (§ 148.) If the defendant requires the aid of counsel, the magistrate must, immediately after the appearance of counsel, or if, after waiting a reasonable time therefor, none appears, proceed to examine the case.

Examination, when to proceed.

861. (§ 149.) The examination must be completed at one session, unless the magistrate, for good cause shown by affidavit, postpone it. The postponement cannot be for more than two days at each time, nor more than six days in all, unless by consent or on motion of the defendant.

When to be completed.

Postponement.

On postponement, defendant to be committed or discharged on bail.

862. (§ 150.) If a postponement is had, the magistrate must commit the defendant for examination, admit him to bail or discharge him from custody upon the deposit of money as provided in this Code, as security for his appearance at the time to which the examination is postponed.

Form of commitment.

863. (§ 151.) The commitment for examination is made by an indorsement, signed by the magistrate on the warrant of arrest, to the following effect: "The within named A. B. having been brought before me under this warrant, is committed for examination to the Sheriff of ——" If the Sheriff is not present, the defendant may be committed to the custody of a peace officer.

Depositions to be read on examination and subpoenas issued.

864. (§ 152.) At the examination, the magistrate must first read to the defendant the depositions of the witnesses examined on taking the information. He must also issue subpoenas, subscribed by him, for witnesses within the State, required either by the prosecution or the defense.

Examination of witnesses to be in presence of defendant, etc.

865. (§ 153.) The witnesses must be examined in the presence of the defendant, and may be cross-examined in his behalf.

Examination of defendant's witnesses.

866. (§ 159.) When the examination of witnesses on the part of the people is closed, any witnesses the defendant may produce must be sworn and examined.

Exclusion and separation of witnesses.

867. (§ 160.) While a witness is under examination, the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined.

Who may be present at the examination.

868. (§ 161.) The magistrate must also, upon the request of the defendant, exclude from the examination every person except his clerk, the prosecutor and his

counsel, the Attorney General, the District Attorney of the county, the defendant and his counsel, and the officer having the defendant in custody.

869. (§ 162.) The testimony given by each witness must be reduced to writing, as a deposition, by the magistrate, or under his direction, and authenticated, in the following form:

Testimony,
how taken
and
authenti-
cated.

1. It must state the name of the witness, his place of residence, and his business or profession.

2. It must contain the questions put to the witness and his answers thereto, each answer being distinctly read to him as it is taken down, and being corrected or added to until it conforms to what he declares is the truth.

3. If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, must be stated.

4. The deposition must be signed by the witness, or if he refuses to sign it, his reason for refusing must be stated in writing as he gives it.

5. It must be signed and certified by the magistrate.

870. The magistrate or his clerk must keep the depositions taken on the information or on the examination, until they are returned to the proper Court; and must not permit them to be examined or copied by any person except a Judge of a Court having jurisdiction of the offense, or authorized to issue writs of habeas corpus, the Attorney General, District Attorney, or other prosecuting attorney, and the defendant and his counsel.

Deposi-
tion, by
whom and
how kept.

871. (§ 163.) If, after hearing the proofs, it appears either that no public offense has been committed or that there is not sufficient cause to believe the defendant guilty of a public offense, the magistrate must

Defendant,
when
and how
discharged.

order the defendant to be discharged, by an indorsement on the depositions and statement, signed by him, to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order him to be discharged."

When and
how to be
commit-
ted.

872. (§ 164.) If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe the defendant guilty thereof, the magistrate must indorse on the depositions an order, signed by him, to the following effect: "It appearing to me that the offense in the within depositions mentioned (or any offense, according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer to the same."

Order for
commit-
ment.

873. (§ 165.) If the offense is not bailable, the following words must be added to the indorsement: "And he is hereby committed to the Sheriff of the County of —."

Certificate
of bail
being taken

874. (§ 166.) If the offense is bailable, and bail is taken by the magistrate, the following words must be added to the indorsement: "and I have admitted him to bail on the undertaking hereto annexed."

Order for
bail on
commit-
ment.

875. (§ 167.) If the offense is bailable, and the defendant is admitted to bail, but bail has not been taken, the following words must be added to the order indorsed on the deposition: "and that he is admitted to bail in the sum of — dollars, and is committed to the Sheriff of the County of —, until he gives such bail."

Commit-
ment, how
made and
to whom
delivered.

876. (§ 168.) If the magistrate order the defendant to be committed, he must make out a commitment, signed by him, with his name of office, and deliver it,

with the defendant, to the officer to whom he is committed, or, if that officer is not present, to a peace officer, who must deliver the defendant into the proper custody, together with the commitment.

877. (§ 169.) The commitment must be to the following effect: Form of commitment.

COUNTY OF — (as the case may be).

The People of the State of California to the Sheriff of the County of —:

An order having been this day made by me, that A. B. be held to answer upon a charge of (stating briefly the nature of the offense, and giving as near as may be the time when and the place where the same was committed), you are commanded to receive him into your custody and detain him until he is legally discharged.

Dated this — day of —, eighteen —.

878. (§ 170.) On holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on the part of the people a written undertaking, to the effect that he will appear and testify at the Court to which the depositions and statements are to be sent, or that he will forfeit the sum of five hundred dollars. Undertaking of witnesses to appear, when and how taken.

879. (§ 171.) When the magistrate or a Judge of the Court in which the action is pending is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify unless security is required, he may order the witness to enter into a written undertaking, with sureties, in such sum as he may deem proper, for his appearance as specified in the preceding section. Security for the appearance of witnesses, when and how required.

880. (§ 172.) Infants and married women, who are material witness against the defendant, may be required to procure sureties for their appearance, as provided in the last section. Infants and married women may be required to give security.

Witnesses
to be
committed
on refusal
to give
security
for their
appear-
ance.

881. (§ 173.) If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuses compliance with the order for that purpose, the magistrate must commit him to prison until he complies or is legally discharged.

Witness
unable
to give
security
may be con-
ditionally
examined.

882. (§§ 174, 175.) When, however, it satisfactorily appears, by examination on oath of the witness, or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the people; such examination must be by question and answer, and conducted in the same manner as the examination before a committing magistrate is required by this Code to be conducted, and the witness thereupon be discharged; but this section does not apply to the prosecutor or to an accomplice in the commission of the offense charged.

Not appli-
cable to
prosecutor
or
accomplice.

Magistrate
to return
deposi-
tions, etc.,
to the Court

883. (§ 176.) When a magistrate has discharged a defendant, or has held him to answer, he must return, without delay, to the Clerk of the Court at which the defendant is required to appear, the warrant, if any, the depositions, and all undertakings of bail, or for the appearance of witnesses taken by him.

TITLE IV.

OF PROCEEDINGS AFTER COMMITMENT AND BEFORE INDICTMENT.

CHAPTER I. *Preliminary provisions.*

II. *Formation of the Grand Jury.*

III. *Powers and duties of a Grand Jury.*

IV. *Presentment and proceedings thereon.*

CHAPTER I.

PRELIMINARY PROVISIONS.

SECTION 888. What prosecutions must be by indictment.

889. What by accusation or information.

890. Indictments and accusations, in what Court found.

888. (§ 177.) All public offenses triable in the District and County Courts, must be prosecuted by indictment, except as provided in the next section.

What prosecutions must be by indictment.

889. (§ 178.) When the proceedings are had for the removal of district, county, municipal, or township officers, they may be commenced by an accusation or information, in writing, as provided in Sections 758 and 772.

What by accusation or information.

890. (§ 179.) All accusations against district, county, municipal, and township officers, and all indictments, must be found in the County Court.

Indictments and accusations, in what Court found.

CHAPTER II.

FORMATION OF THE GRAND JURY.

SECTION 894. Who may challenge the panel or an individual juror.

895. Cause of challenge to a panel.

896. Cause of challenge to an individual grand juror.

897. Manner of taking and trying challenges.

898. Decision upon challenges.

899. Effect of allowing a challenge to a panel.

900. Effect of allowing challenge to an individual juror.

901. Objections can only be taken by challenge.

902. Appointment of a foreman.

903. Oath of foreman.

904. Oath of other grand jurors.

905. Charge of the Court.

906. Retirement of the Grand Jury. Discharge of.

907. Special Grand Jury.

908. Order for special Grand Jury.

909. Order, how executed.

910. Special Grand Jury, how formed.

Who may challenge the panel or an individual juror.

894. (§ 181.) The people, or a person held to answer a charge for a public offense, may challenge the panel of a Grand Jury, or an individual juror.

Cause of challenge to a panel.

895. (§ 182.) A challenge to the panel may be interposed for one or more of the following causes only:

1. That the requisite number of ballots was not drawn from the jury box of the county;
2. That notice of the drawing of the Grand Jury was not given;
3. That the drawing was not had in the presence of the officers designated by law.

Cause of challenge to an individual grand juror

896. (§ 183.) A challenge to an individual Grand Juror may be interposed for one or more of the following causes only:

1. That he is a minor.
2. That he is an alien.
3. That he is insane.
4. That he is prosecutor upon a charge against the defendant.
5. That he is a witness on the part of the prosecution, and has been served with process or bound by an undertaking as such.
6. That he has formed or expressed an unqualified opinion or belief that the defendant is guilty or not guilty of the offense charged; but a hypothetical opinion, founded on hearsay or information supposed to be true, unaccompanied with malice or ill will, shall not disqualify a juror or be a cause of challenge.
7. That a state of mind exists on his part in reference to the case, or to either party, which satisfies the Court that he cannot act impartially and without prejudice to the substantial rights of the party challenging.

Manner of taking and trying challenges.

897. (§ 184.) The challenges mentioned in the last three sections may be oral, and must be entered

upon the minutes, or taken down by the reporter, and tried by the Court in the same manner as challenges in the case of a trial jury, which are triable by the Court.

898. (§ 185.) The Court must allow or disallow the challenge, and the Clerk must enter its decisions upon the minutes. Decision upon challenges.

899. (§ 186.) If a challenge to the panel is allowed, the Grand Jury are prohibited from inquiring into the charge against the defendant, by whom the challenge was interposed. If, notwithstanding, they do so, and find an indictment against him, the Court must direct it to be set aside. Effect of allowing a challenge to a panel.

900. (§§ 187, 188.) If a challenge to an individual Grand Juror is allowed, he cannot be present or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the Grand Jury thereon. The Grand Jury must inform the Court of a violation of this section, and it is punishable by the Court as a contempt. Effect of allowing challenge to an individual juror.

901. (§ 189.) A person held to answer to a charge for a public offense can take advantage of any objection to the panel or to an individual Grand Juror in no other mode than by challenge. Objections can only be taken by challenge.

902. (§ 190.) From the persons summoned to serve as Grand Jurors and appearing, the Court must appoint a foreman. The Court must also appoint a foreman when the person already appointed is excused or discharged before the Grand Jury is dismissed. Appointment of a foreman.

903. (§ 191.) The following oath must be administered to the foreman of the Grand Jury: "You, as foreman of the Grand Jury, shall diligently inquire into and true presentment make of all public offenses against the people of this State, committed or triable Oath of foreman.

within this county, of which you shall have or can obtain legal evidence. You shall present no person through malice, hatred, or ill will, nor leave any unrepresented through fear, favor, or affection, or for any reward or the promise or hope thereof; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God."

Oath of
other grand
jurors.

904. (§ 192.) The following oath must be immediately thereupon administered to the other Grand Jurors present: "The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part, so help you God."

Charge of
the Court.

905. (§ 193.) The Grand Jury being impaneled and sworn, must be charged by the Court. In doing so, the Court must give them such information as it may deem proper, or as is required by law, as to their duties, and as to any charges for public offenses returned to the Court or likely to come before the Grand Jury.

Retirement
of the
Grand
Jury.
Discharge
of.

906. (§§ 194, 195.) The Grand Jury must then retire to a private room and inquire into the offenses cognizable by them. On the completion of the business before them, they must be discharged by the Court; but, whether the business is completed or not, they are discharged by the final adjournment of the Court.

Special
Grand
Jury.

907. (§ 196.) If an offense is committed during the sitting of the Court, after the discharge of the Grand Jury, the Court may, in its discretion, direct an order to be entered that the Sheriff summon another Grand Jury.

908. (§ 197.) The order must require the Sheriff to summon sixteen persons, qualified to serve as Grand Jurors, to appear at a time specified, and a copy thereof, under the seal of the Court, must, by the Clerk, be delivered to the Sheriff.

Order for
special
Grand
Jury.

909. (§ 198.) The Sheriff must execute the order and return it, with a list of names of the persons summoned.

Order, how
executed.

910. (§ 199.) At the time appointed the list must be called over, and the names of those in attendance be written by the Clerk on separate ballots and put into a box, from which, a Grand Jury must be drawn.

Special
Grand
Jury, how
formed.

CHAPTER III.

POWERS AND DUTIES OF A GRAND JURY.

SECTION 915. Powers of Grand Jury.

- 916. Presentment defined.
- 917. Indictment defined.
- 918. Foreman may administer oaths.
- 919. Evidence receivable before the Grand Jury.
- 920. Grand Jury not bound to hear evidence for the defendant, but may order explanatory evidence, etc.
- 921. Degree of evidence to warrant indictment.
- 922. Grand Jurors must declare their knowledge as to commission of public offense.
- 923. Must inquire into cases of persons imprisoned, etc.
- 924. Entitled to access to public prison, etc.
- 925. When and from whom they may ask advice, and who may be present during their sessions.
- 926. Secrets of Grand Jury to be kept, except, etc.
- 927. Grand Juror not to be questioned for his conduct, except, etc.

915. (§ 205.) The Grand Jury must inquire into all public offenses committed or triable within the county, and present them to the Court, either by presentment or by indictment.

Powers of
Grand
Jury.

Presentment defined.

916. (§ 207.) A presentment is an informal statement in writing, by the Grand Jury, representing to the Court that a public offense has been committed which is triable in the county, and that there is reasonable ground for believing that a particular individual named or described therein has committed it.

Indictment defined.

917. (§ 206.) An indictment is an accusation in writing, presented by the Grand Jury to a competent Court, charging a person with a public offense.

Foreman may administer oaths.

918. (§ 208.) The foreman may administer an oath to any witness appearing before the Grand Jury.

Evidence receivable before the Grand Jury.

919. (§§ 209, 210.) In the investigation of a charge for the purpose of either presentment or indictment, the Grand Jury can receive no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence, or the deposition of a witness in the cases mentioned in the third subdivision of Section 686. The Grand Jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence.

Grand Jury not bound to hear evidence for the defendant, but may order explanatory evidence, etc.

920. (§ 211.) The Grand Jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the District Attorney to issue process for the witnesses.

Degree of evidence to warrant indictment.

921. (§ 212.) The Grand Jury ought to find an indictment when all the evidence before them, taken together, if unexplained or uncontradicted, would, in their judgment, warrant a conviction by a trial jury.

922. (§ 213.) If a member of a Grand Jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he must declare the same to his fellow jurors, who must thereupon investigate the same.

Grand Jurors must declare their knowledge as to commission of public offense.

923. (§ 214.) The Grand Jury must inquire into the case of every person imprisoned in the jail of the county on a criminal charge and not indicted; into the condition and management of the public prisons within the county; and into the willful and corrupt misconduct in office of public officers of every description within the county.

Must inquire into cases of persons imprisoned, etc.

924. (§ 215.) They are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the county.

Entitled to access to public prison, etc.

925. (§ 216.) The Grand Jury may, at all reasonable times, ask the advice of the Court, or the Judge thereof, or of the District Attorney; but unless such advice is asked the Judge of the Court must not be present during the sessions of the Grand Jury. The District Attorney of the county may at all times appear before the Grand Jury for the purpose of giving information or advice relative to any matter cognizable by them, and may interrogate witnesses before them whenever they or he thinks it necessary; but no other person is permitted to be present during the sessions of the Grand Jury except the members and witnesses actually under examination, and no person must be permitted to be present during the expression of their opinions or giving their votes upon any matter before them.

When and from whom they may ask advice, and who may be present during their sessions.

NOTE.—Stats. 1871-2, p. 540.

An Act in relation to interpreters before Grand Juries.

[Approved March 23, 1872.]

[Enacting clause.]

SECTION 1. The Grand Jury or District Attorney may require, by subpoena, the attendance of any person before the Grand Jury as interpreter; and the interpreter may be present at the examination of witnesses before the Grand Jury.

SEC. 2. This Act shall be in force from and after its passage.

Secrets of
Grand Jury
to be kept,
except, etc.

926. (§§ 217, 218.) Every member of the Grand Jury must keep secret whatever he himself or any other Grand Juror may have said, or in what manner he or any other Grand Juror may have voted on a matter before them; but may, however, be required by any Court to disclose the testimony of a witness examined before the Grand Jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the Court, or to disclose the testimony given before them by any person, upon a charge against such person for perjury in giving his testimony or upon trial therefor.

Grand
Juror
not to be
questioned
for his
conduct,
except, etc.

927. (§ 219.) A Grand Juror cannot be questioned for anything he may say or any vote he may give in the Grand Jury relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty, in making an accusation or giving testimony to his fellow jurors.

CHAPTER IV.

PRESENTMENT AND PROCEEDINGS THEREON.

SECTION 931. Presentment must be by twelve Grand Jurors, etc.

932. Must be presented to the Court and filed.

933. If the facts stated in the presentment constitute a public offense, the Court must direct a bench warrant.

SECTION 934. Bench warrant, by whom and how issued.

935. Form of bench warrant.

936. Bench warrant, how served.

937. Proceedings of magistrate on defendant being brought before him.

931. (§ 220.) A presentment cannot be found without the concurrence of at least twelve Grand Jurors. When so found it must be signed by the foreman.

Presentment must be by twelve Grand Jurors, etc.

932. (§ 221.) The presentment, when found, must be presented by the foreman, in presence of the Grand Jury, to the Court, and must be filed with the Clerk.

Must be presented to the Court and filed.

933. (§ 224.) If the facts stated in the presentment constitute a public offense, triable in the county, the Court must direct the Clerk to issue a bench warrant for the arrest of the defendant.

If the facts stated in the presentment constitute a public offense, the Court must direct a bench warrant.

934. (§ 225.) The Clerk, on the application of the Judge or District Attorney, may accordingly, at any time after the order, whether the Court be sitting or not, issue a bench warrant, under his signature and the seal of the Court, into one or more counties.

Bench warrant, by whom and how issued.

935. (§ 226.) The bench warrant, upon presentment, must be substantially in the following form:

Form of bench warrant.

COUNTY OF ———.

The People of the State of California to any Sheriff, Constable, Marshal, or Policeman in this State:

A presentment having been made on the — day of —, eighteen —, to the County Court of the County of —, charging C. D. with the crime of — (designating it generally), you are therefore commanded forthwith to arrest the above named C. D. and take him before E. F., a magistrate of this county; or, in case of his absence or inability to act, before the nearest and most accessible magistrate in this county.

Given under my hand, with the seal of said Court affixed, this — day of —, A. D. eighteen —.

By order of the Court.

[SEAL.]

G. H., Clerk.

Bench
warrant,
how served

936. (§ 227.) The bench warrant may be served in any county, and the officer serving it must proceed thereon as upon a warrant of arrest on an information, except that when served in another county, it need not be indorsed by a magistrate of that county.

Proceed-
ings of
magistrate
on defend-
ant being
brought
before him.

937. (§ 228.) The magistrate, when the defendant is brought before him, must proceed upon the charges contained in the presentment, in the same manner as upon a warrant of arrest on an information.

TITLE V.

OF THE INDICTMENT.

- CHAPTER I. *Finding and presentment of the indictment.*
II. *Rules of pleading and form of the indictment.*
-

CHAPTER I.

FINDING AND PRESENTMENT OF THE INDICTMENT.

SECTION 940. Indictment must be found by twelve jurors, indorsed, etc.

941. If not found depositions, etc., must be returned to Court, etc.

942. Effect of dismissal.

943. Names of witnesses inserted at foot of indictment.

944. Indictment, how presented and filed.

945. Proceedings when defendant is not in custody.

Indict-
ment must
be found
by twelve
jurors,
indorsed,
etc.

940. (§ 229.) An indictment cannot be found without the concurrence of at least twelve Grand Jurors. When so found it must be indorsed, "A true bill," and the indorsement must be signed by the foreman of the Grand Jury.

941. (§ 230.) If twelve Grand Jurors do not concur in finding an indictment against a defendant who has been held to answer, the depositions and statement, if any, transmitted to them must be returned to the Court, with an indorsement thereon, signed by the foreman, to the effect that the charge is dismissed.

If not found depositions, etc., must be returned to Court, etc.

942. (§ 231.) The dismissal of the charge does not prevent its resubmission to a Grand Jury as often as the Court may direct. But without such direction it cannot be resubmitted.

Effect of dismissal.

943. (§ 232.) When an indictment is found, the names of the witnesses examined before the Grand Jury, or whose depositions may have been read before them, must be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the Court.

Names of witnesses inserted at foot of indictment

944. (§ 233.) An indictment, when found by the Grand Jury, must be presented by their foreman, in their presence, to the Court, and must be filed with the Clerk.

Indictment, how presented and filed.

945. (§ 234.) When an indictment is found against a defendant not in custody, the same proceedings must be had as are prescribed in Sections 979 to 984, inclusive, against a defendant who fails to appear for arraignment.

Proceedings when defendant is not in custody.

CHAPTER II.

RULES OF PLEADING AND FORM OF THE INDICTMENT.

SECTION 948. Form of and rules of pleading.

949. First pleading by the people is indictment.

950. Indictment, what to contain.

951. Form of indictment.

952. Indictment must be direct and certain.

953. When defendant is indicted by fictitious name, etc.

SECTION 954. The indictment must charge but one offense and in one form, except where it may be committed by different means.

- 955. Statement as to time when offense was committed.
- 956. Statement as to person injured or intended to be.
- 957. Construction of words used in an indictment.
- 958. Words used in a statute need not be strictly pursued.
- 959. Indictment, when sufficient.
- 960. Indictment not insufficient for defect of form not tending to prejudice defendant.
- 961. Presumptions of law, etc., need not be stated.
- 962. Judgments, etc., how pleaded.
- 963. Private statutes, how pleaded.
- 964. Pleading in indictment for libel.
- 965. Pleading in indictment for forgery, where instrument has been destroyed or withheld by defendant.
- 966. Pleading in an indictment for perjury or subornation of perjury.
- 967. Pleading in indictment for larceny or embezzlement.
- 968. Pleading in an indictment for selling, exhibiting, etc., lewd and obscene books, etc.
- 969. Previous conviction of another offense, how stated in indictment.
- 970. Indictment against several, one or more may be acquitted.
- 971. Distinction between accessory before the fact and principal abrogated. Principals, how indicted, etc.
- 972. Accessory may be indicted and tried, though principal has not been.

Form of
and rules
of pleading

948. (§ 235.) All the forms of pleading in criminal actions, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed by this Code.

First pleading
by the
people is
indictment.

949. (§ 236.) The first pleading on the part of the people is the indictment.

Indictment,
what
to contain.

950. (§ 237.) The indictment must contain:

1. The title of the action, specifying the name of the Court to which the indictment is presented, and the names of the parties.

2. A statement of the acts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended.

951. (§ 238.) It may be substantially in the following form: Form of indictment.

*The People of the State of California against A. B.,
in the County Court of the County of —, at its —
Term, A. D. eighteen —:*

A. B. is accused by the Grand Jury of the County of —, by this indictment, of the crime of (giving its legal appellation, such as murder, arson, or the like, or designating it as felony or misdemeanor), committed as follows: The said A. B., on the — day of —, A. D. eighteen —, at the County of — (here set forth the act or omission charged as an offense).

952. (§ 239.) It must be direct and certain, as it regards: Indictment must be direct and certain

1. The party charged;
2. The offense charged;
3. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

953. (§ 240.) When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment. When defendant is indicted by fictitious name, etc.

954. (§ 241.) The indictment must charge but one offense, and in one form only, except that when the offense may be committed by the use of different means, the indictment may allege the means in the alternative. The indictment must charge but one offense and in one form, except where it may be committed by different means.

955. (§ 242.) The precise time at which the offense was committed need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the offense. Statement as to time when offense was committed.

Statement
as to person
injured or
intended
to be.

956. (§ 243.) When an offense involves the commission of, or an attempt to commit, a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

Construction
of
words used
in an
indictment.

957. (§ 244.) The words used in an indictment are construed in their usual acceptance in common language, except such words and phrases as are defined by law, which are construed according to their legal meaning.

Words used
in a statute
need not be
strictly
pursued.

958. (§ 245.) Words used in a statute to define a public offense need not be strictly pursued in the indictment; but other words conveying the same meaning may be used.

Indict-
ment, when
sufficient.

959. (§ 246.) The indictment is sufficient if it can be understood therefrom:

1. That it is entitled in a Court having authority to receive it, though the name of the Court be not stated;
2. That it was found by a Grand Jury of the county in which the Court was held;
3. That the defendant is named, or, if his name cannot be discovered, that he is described by a fictitious name, with a statement that his true name is to the jury unknown;
4. That the offense was committed at some place within the jurisdiction of the Court, except where the act, though done without the local jurisdiction of the county, is triable therein;
5. That the offense was committed at some time prior to the time of finding the indictment;
6. That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a

manner as to enable a person of common understanding to know what is intended;

7. That the act or omission charged as the offense is stated with such a degree of certainty as to enable the Court to pronounce judgment upon a conviction, according to the right of the case.

960. (§ 247.) No indictment is insufficient, nor can the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form which does not tend to the prejudice of a substantial right of the defendant upon its merits.

Indictment not insufficient for defect of form not tending to prejudice defendant.

961. (§ 248.) Neither presumptions of law nor matters of which judicial notice is taken, need be stated in an indictment.

Presumptions of law, etc., need not be stated.

962. (§ 249.) In pleading a judgment or other determination of, or proceeding before, a Court or officer of special jurisdiction, it is not necessary to state the facts constituting jurisdiction; but the judgment or determination may be stated as given or made, or the proceedings had. The facts constituting jurisdiction, however, must be established on the trial.

Judgments, etc., how pleaded.

963. (§ 250.) In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the Court must thereupon take judicial notice thereof.

Private statutes, how pleaded.

964. (§ 251.) An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment is founded; but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial.

Pleading in indictment for libel.

Pleading in indictment for forgery, where instrument has been destroyed or withheld by defendant.

965. (§ 252.) When an instrument which is the subject of an indictment for forgery has been destroyed or withheld by the act or the procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment and established on the trial, the misdescription of the instrument is immaterial.

Pleading in an indictment for perjury or subornation of perjury.

966. (§ 253.) In an indictment for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what Court and before whom the oath alleged to be false was taken, and that the Court, or the person before whom it was taken, had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the Court or person before whom the perjury was committed.

Pleading in indictment for larceny or embezzlement.

967. In an indictment for the larceny or embezzlement of money, bank notes, shares of stock, or valuable securities, it is sufficient to allege the larceny or embezzlement to be of money, bank notes, shares of stock, or valuable securities, without specifying the coin, number, denomination, or kind thereof.

Pleading in an indictment for selling, exhibiting, etc., lewd and obscene books, etc.

968. An indictment for exhibiting, publishing, passing, selling, or offering to sell, or having in possession, with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing; but it is sufficient to state generally the fact of the lewdness or obscenity thereof.

969. In charging in an indictment, the fact of a previous conviction of a felony, or of an attempt to commit an offense which, if perpetrated, would have been a felony, or of petit larceny, it is sufficient to state, "That the defendant, before the commission of the offense charged in this indictment, was, in (giving the title of the Court in which the conviction was had) convicted of a felony (or attempt, etc., or of petit larceny)."

Previous conviction of another offense, how stated in indictment.

970. (§ 254.) Upon an indictment against several defendants, any one or more may be convicted or acquitted.

Indictment against several, one or more may be acquitted.

971. (§ 255.) The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated, and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, shall hereafter be indicted, tried, and punished as principals.

Distinction between accessory before the fact and principal abrogated.

Principals, how indicted, etc.

972. (§ 256.) An accessory to the commission of a felony may be indicted, tried, and punished, though the principal may be neither indicted nor tried.

Accessory may be indicted and tried, though principal has not been.

TITLE VI.

OF PLEADINGS AND PROCEEDINGS AFTER INDICTMENT AND BEFORE THE COMMENCEMENT OF THE TRIAL.

- CHAPTER I. *Of the arraignment of the defendant.*
 II. *Setting aside the indictment.*
 III. *Demurrer.*
 IV. *Plea.*
 V. *Transmission of certain indictments from the County Court to the District Court or Municipal Criminal Court of San Francisco.*
 VI. *Removal of the action before trial.*
 VII. *The mode of trial.*
 VIII. *Formation of the trial jury and the calendar of issues for trial.*
 IX. *Postponement of the trial.*
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CHAPTER I.

OF THE ARRAIGNMENT OF THE DEFENDANT.

- SECTION 976. Defendant must be arraigned in the Court where the indictment was found or sent.
 977. Defendant, when to be present at arraignment.
 978. If in custody, to be brought before Court.
 979. If discharged on bail, bench warrant to issue.
 980. Bench warrant, by whom and how issued.
 981. Form of bench warrant.
 982. Directions in the bench warrant, if the offense is bailable. Order for bail to be indorsed.
 983. Bench warrant, how served.
 984. Proceeding on giving bail in another county.
 985. Ordering defendant into custody or increasing bail when indictment is for felony.
 986. Defendant, if present when order made, to be committed; if not, bench warrant to issue.
 987. Defendant, on arraignment, to be informed of his right to counsel. When Court to assign counsel.

SECTION 988. Arraignment, how made.

989. Proceedings on arraignment, when defendant is not indicted by his true name.

990. Time allowed, and how defendant may answer on arraignment.

976. (§ 258.) When the indictment is filed, the defendant must be arraigned thereon before the Court in which it is found, if triable therein; if not, before the Court to which it is transmitted.

Defendant must be arraigned in the Court where the indictment was found or sent.

977. (§ 259.) If the indictment is for a felony, the defendant must be personally present; but if for a misdemeanor, he may appear upon the arraignment by counsel.

Defendant, when to be present at arraignment.

978. (§ 260.) When his personal appearance is necessary, if he is in custody, the Court may direct and the officer in whose custody he is must bring him before it to be arraigned.

If in custody, to be brought before Court.

979. (§ 261.) If the defendant has been discharged on bail, or has deposited money instead thereof, and do not appear to be arraigned when his personal attendance is necessary, the Court, in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the Clerk to issue a bench warrant for his arrest.

If discharged on bail, bench warrant to issue.

980. (§ 262.) The Clerk, on the application of the District Attorney, may, at any time after the order, whether the Court is sitting or not, issue a bench warrant to one or more counties.

Bench warrant, by whom and how issued.

981. (§ 263.) The bench warrant upon the indictment must, if the offense is a felony, be substantially in the following form:

Form of bench warrant.

COUNTY OF —.

The People of the State of California to any Sheriff, Constable, Marshal, or Policeman in this State:

An indictment having been found on the — day

CHAPTER III.

DEMURRER.

SECTION 1002. Pleading on part of defendant.

1003. Demurrer or plea, when put in.

1004. Grounds of demurrer.

1005. Demurrer, how put in, and its form.

1006. When heard.

1007. Judgment on demurrer.

1008. If allowed, bar to another prosecution; when.

1009. If resubmission not ordered, defendant discharged, etc.

1010. Proceedings, if submission ordered.

1011. Proceedings, if demurrer is disallowed.

1012. When objections, forming ground of demurrer, must or may be taken.

Pleading
on part of
defendant.

1002. (§ 287.) The only pleading on the part of the defendant is either a demurrer or a plea.

Demurrer
or plea,
when
put in.

1003. (§ 288.) Both the demurrer and plea must be put in, in open Court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

Grounds of
demurrer.

1004. (§ 289.) The defendant may demur to the indictment when it appears upon the face thereof, either:

1. That the Grand Jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the legal jurisdiction of the county;

2. That it does not substantially conform to the requirement of Sections 950, 951, and 952;

3. That more than one offense is charged in the indictment;

4. That the facts stated do not constitute a public offense;

5. That the indictment contains any matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

1005. (§ 290.) The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment, or it must be disregarded.

Demurrer,
how put in,
and its
form.

1006. (§ 291.) Upon the demurrer being filed, the argument upon the objections presented thereby must be heard, either immediately or at such time as the Court may appoint.

When
heard.

1007. (§ 292.) Upon considering the demurrer, the Court must give judgment, either allowing or disallowing it, and an order to that effect must be entered upon the minutes.

Judgment
on
demurrer.

1008. (§ 293.) If the demurrer is allowed, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offense, unless the Court, being of the opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, directs the case to be resubmitted to the same or another Grand Jury.

If allowed,
bar to an-
other prosecution,
when.

1009. (§ 294.) If the Court does not direct the case to be resubmitted, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail, the money must be refunded to him.

If resub-
mission not
ordered,
defendant
discharged,
etc.

1010. (§ 295.) If the Court directs that the case be resubmitted, the same proceedings must be had thereon as are prescribed in Sections 997 and 998.

Proceed-
ings, if
submission
ordered.

1011. (§ 296.) If the demurrer is disallowed, the Court must permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the Court may direct. If he does not plead judgment may be pronounced against him.

Proceed-
ings, if
demurrer
is dis-
allowed.

1012. (§ 297.) When the objections mentioned in Section 1004 appear upon the face of the indictment,

When objections, forming ground of demurrer, must or may be taken.

they can only be taken by demurrer, except that the objection to the jurisdiction of the Court over the subject of the indictment, or that the facts stated do not constitute a public offense, may be taken at the trial, under the plea of not guilty, or after the trial, in arrest of judgment.

CHAPTER IV.

PLEA.

SECTION 1016. The different kinds of pleas.

1017. Plea, how put in, and its form.

1018. Plea of guilty, how put in, and when it may be withdrawn.

1019. What plea of not guilty puts in issue.

1020. What may be given in evidence under plea of not guilty.

1021. What is not a former acquittal.

1022. What is a former acquittal.

1023. Conviction or acquittal on an indictment for a higher offense, effect of.

1024. Defendant refusing to answer, plea of not guilty to be entered.

The different kinds of pleas.

1016. (§ 298.) There are three kinds of pleas to an indictment. A plea of:

1. Guilty;

2. Not guilty;

3. A former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of not guilty.

Plea, how put in, and its form.

1017. (§§ 299, 300.) Every plea must be oral, and entered upon the minutes of the Court in substantially the following form:

1. If the defendant plead guilty, "The defendant pleads that he is guilty of the offense charged in this indictment."

2. If he plead not guilty, "The defendant pleads

that he is not guilty of the offense charged in this indictment."

3. If he plead a former conviction or acquittal, "The defendant pleads that he has already been convicted (or acquitted) of the offense charged in this indictment, by the judgment of the Court of — (naming it), rendered at — (naming the place), on the — day of —."

1018. (§§ 301, 302.) A plea of guilty can be put in by the defendant himself only in open Court, unless upon indictment against a corporation, in which case it may be put in by counsel. The Court may at any time before judgment, upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted.

Plea of guilty, how put in, and when it may be withdrawn.

1019. (§ 303.) The plea of not guilty puts in issue every material allegation of the indictment.

What plea of not guilty puts in issue.

1020. (§ 304.) All matters of fact tending to establish a defense other than that specified in the third subdivision of Section 1016 may be given in evidence under the plea of not guilty.

What may be given in evidence under plea of not guilty.

1021. (§ 305.) If the defendant was formerly acquitted on the ground of variance between the indictment and the proof, or the indictment was dismissed upon an objection to its form or substance, or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense.

What is not a former acquittal.

1022. (§ 306.) Whenever the defendant is acquitted on the merits, he is acquitted of the same offense, notwithstanding any defect in form or substance in the indictment on which the trial was had.

What is a former acquittal.

1023. (§ 307.) When the defendant is convicted or acquitted upon an indictment, the conviction or

Conviction or acquittal on an indictment for a higher offense, effect of.

acquittal is a bar to another indictment for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment.

Defendant refusing to answer, plea of not guilty to be entered.

1024. (§ 308.) If the defendant refuses to answer the indictment by demurrer or plea, a plea of not guilty must be entered.

CHAPTER V.

TRANSMISSION OF CERTAIN INDICTMENTS FROM THE COUNTY COURT TO THE DISTRICT COURT OR MUNICIPAL CRIMINAL COURT OF SAN FRANCISCO.

SECTION 1028. Transmission of indictments from the County to District Courts.

1029. Indictments against a County Judge to be transmitted to District Court.

1030. Indictments to be transmitted to the Municipal Criminal Court of San Francisco.

Transmission of indictments from the County to District Courts.

1028. (§ 309.) When an indictment is found in the County Court for treason, misprision of treason, murder, or manslaughter, it must be transmitted by the Clerk to the District Court of the county for trial, except when the indictment is found against a person holding the office of District Judge.

Indictments against a County Judge to be transmitted to District Court.

1029. (§ 310.) All indictments found against a County Judge must also be transmitted to the District Court of the county for trial.

Indictments to be transmitted to the Municipal Criminal Court of San Francisco.

1030. All indictments found in the County Court of the City and County of San Francisco must be transmitted by the Clerk to the Municipal Criminal Court of the City and County of San Francisco, except those against the Judge of the last mentioned Court and those triable in the District Court.

CHAPTER VI.

REMOVAL OF THE ACTION BEFORE TRIAL.

SECTION 1033. When action may be removed.

1034. Application for removal, how made.

1035. Application, when granted.

1036. Order of removal.

1037. Proceedings on removal, if defendant is in custody.

1038. Authority of Court to which action is removed. When original papers must be transmitted.

1033. (§ 312.) A criminal action, prosecuted by indictment, may be removed from the Court in which it is pending on the application of the defendant, on the ground that a fair and impartial trial cannot be had in the county where the indictment is pending.

When
action may
be removed

1034. (§ 313.) The application must be made in open Court, and in writing, verified by the affidavit of the defendant, a copy of which must be served on the District Attorney at least one day before the application is made. Whenever the affidavit shows that the defendant cannot safely appear in person to make the application, because the popular excitement against him is so great as to endanger his personal safety, and such statement is sustained by other testimony, the application may be made by counsel, and heard and determined in the absence of the defendant, though he is indicted for felony, and has not at the time of such application been arrested, or given bail, or been arraigned, or pleaded or demurred to the indictment.

Applica-
tion for
removal,
how made.

1035. (§ 314.) If the Court is satisfied that the representation of the defendant is true, an order must be made for the removal of the action to the proper Court of a county free from a like objection.

Applica-
tion, when
granted.

Order of
removal.

1036. (§ 315.) The order of removal must be entered upon the minutes, and the Clerk must immediately make out and transmit to the Court to which the action is removed a certified copy of the order of removal record, pleadings, and proceedings in the action, including the undertakings for the appearance of the defendant and of the witnesses.

Proceed-
ings on
removal, if
defendant
is in
custody.

1037. (§ 316.) If the defendant is in custody, the order must direct his removal, and he must be forthwith removed by the Sheriff of the county where he is imprisoned, to the custody of the Sheriff of the county to which the action is removed.

Authority
of Court to
which
action is
removed.

1038. (§ 317.) The Court to which the action is removed, must proceed to trial and judgment therein as if the action had been commenced in such Court.

When
original
papers
must be
trans-
mitted.

If it is necessary to have any of the original pleadings or other papers before such Court, the Court from which the action is removed must at any time, upon application of the District Attorney or the defendant, order such papers or pleadings to be transmitted by the Clerk, a certified copy thereof being retained.

CHAPTER VII.

THE MODE OF TRIAL.

SECTION 1041. Issue of fact defined.

1042. How tried.

1043. When presence of defendant is necessary on the trial.

Issue of
fact
defined.

1041. (§ 318.) An issue of fact arises:

1. Upon a plea of not guilty; or,
2. Upon a plea of a former conviction or acquittal of the same offense.

How tried.

1042. (§ 319.) Issues of fact must be tried by jury.

1043. (§ 320.) If the indictment is for a felony, the defendant must be personally present at the trial; but if for misdemeanor, the trial may be had in the absence of the defendant; if, however, his presence is necessary for the purpose of identification, the Court may, upon application of the District Attorney, by an order or warrant, require the personal attendance of the defendant at the trial.

When presence of defendant is necessary on the trial.

CHAPTER VIII.

FORMATION OF THE TRIAL JURY AND THE CALENDAR OF ISSUES FOR TRIAL.

SECTION 1046. Formation of trial jury.

1047. Clerk to prepare a calendar.

1048. Order of disposing of issues on the calendar.

1049. Defendant entitled to two days to prepare for trial.

1046. (§ 321.) Trial juries for criminal actions are formed in the same manner as trial juries in civil actions.

Formation of trial jury.

1047. (§ 322.) The Clerk must prepare a calendar of all criminal actions pending in the Court, enumerating them according to the date of the filing of the indictment, specifying opposite the title of each action whether it is for a felony or a misdemeanor, and whether the defendant is in custody or on bail.

Clerk to prepare a calendar.

1048. (§ 323.) The issues on the calendar must be disposed of in the following order, unless upon the application of either party, for good cause shown by affidavit, and upon two days notice to the opposite party, with service of a copy of the affidavit in support of the application, the Court shall direct an indictment to be tried out of its order:

Order of disposing of issues on the calendar.

1. Indictments for felony, when the defendant is in custody;

2. Indictments for misdemeanor, when the defendant is in custody;

3. Indictments for felony, when the defendant is on bail;

4. Indictments for misdemeanor, when the defendant is on bail.

Defendant
entitled to
two days to
prepare for
trial.

1049. (§ 324.) After his plea, the defendant is entitled to at least two days to prepare for trial.

CHAPTER IX.

POSTPONEMENT OF THE TRIAL.

SECTION 1052. Postponement, when, and how ordered.

Postpone-
ment,
when, and
how
ordered.

1052. (§ 325.) When an indictment is called for trial, or at any time previous thereto, the Court may, upon sufficient cause shown by affidavit, direct the trial to be postponed to another day of the same or of the next term.

TITLE VII.

OF PROCEEDINGS AFTER THE COMMENCEMENT OF THE TRIAL AND BEFORE JUDGMENT.

CHAPTER I. *Challenging the jury.*

II. *The trial.*

III. *Conduct of the jury after cause is submitted to them.*

IV. *The verdict.*

V. *Bills of exception.*

VI. *New trials.*

VII. *Arrest of judgment.*

CHAPTER I.

CHALLENGING THE JURY.

SECTION 1055. Definition and division of challenges.

1056. Defendants cannot sever in challenges.

1057. Panel defined.

1058. Challenge to the jury defined.

1059. Upon what founded.

1060. When and how taken.

1061. If sufficiency of the challenge be denied, adverse party may except. Exception, how taken and tried.

1062. If exception overruled, Court may allow denial, etc.

1063. Denial of challenge, how made, and trial thereof. Who may be examined on trial of challenge.

1064. Challenge when jury is summoned but not drawn, for bias in summoning officer.

1065. If challenge allowed, jury to be discharged; if disallowed, to be impaneled.

1066. Defendant to be informed of his right to challenge individual jurors.

1067. Kinds of challenges to individual juror.

1068. Challenge, when taken.

1069. Peremptory challenge, what, and how taken.

1070. Number of peremptory challenges.

1071. Definition and kinds of challenge, for cause.

1072. General causes of challenge.

1073. Particular cause of challenge.

1074. Ground of challenge for actual bias.

1075. Exemption not a ground of challenge.

1076. Causes of challenge, how stated.

1077. Exceptions to challenge, and denial thereof.

1078. Challenge, how tried.

1079. Triers, how appointed. Majority may decide.

1080. Oath of triers.

1081. Juror challenged may be examined as a witness.

1082. Rules of evidence on trial of challenge.

1083. Challenge for implied bias, how determined.

1084. Instructions to triers on trial of challenge for actual bias.

1085. Verdict of triers, and its effect.

1086. Challenges, first by the defendant and then by the people.

1087. Order of challenges.

1088. Peremptory challenges may be taken after challenges for cause on both sides are exhausted.

Definition
and
division of
challenges.

1055. (§ 326.) A challenge is an objection made to the trial jurors, and is of two kinds:

1. To the panel;
2. To an individual juror.

Defendants
cannot
sever in
challenges

1056. (§ 327.) When several defendants are tried together they cannot sever their challenges, but must join therein.

Panel
defined.

1057. (§ 328.) The panel is a list of jurors returned by a Sheriff, to serve at a particular Court or for the trial of a particular action.

Challenge
to the jury
defined.

1058. (§ 329.) A challenge to the panel is an objection made to all the jurors returned, and may be taken by either party.

Upon what
founded.

1059. (§ 330.) A challenge to the panel can be founded only on a material departure from the forms prescribed in respect to the drawing and return of the jury in civil actions, or on the intentional omission of the Sheriff to summon one or more of the jurors drawn.

When and
how taken.

1060. (§ 331.) A challenge to the panel must be taken before a juror is sworn, and must be in writing or be noted by the Phonographic Reporter, and must plainly and distinctly state the facts constituting the ground of challenge.

If suffi-
ciency of
the
challenge
be denied,
adverse
party may
except.
Exception,
how taken
and tried.

1061. (§§ 332, 333.) If the sufficiency of the facts alleged as ground of the challenge is denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered on the minutes of the Court, or of the Phonographic Reporter, and thereupon the Court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

1062. (§ 334.) If, on the exception, the Court finds the challenge sufficient, it may, if justice requires it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception is allowed, the Court may, in like manner, permit an amendment of the challenge.

If exception overruled. Court may allow denial, etc.

1063. (§§ 335, 336.) If the challenge is denied, the denial may be oral, and must be entered on the minutes of the Court, or of the Phonographic Reporter, and the Court must proceed to try the question of fact; and upon such trial, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

Denial of challenge, how made, and trial thereof.

Who may be examined on trial of challenge.

1064. (§ 337.) When the panel is formed from persons whose names are not drawn as jurors, a challenge may be taken to the panel on account of any bias of the officer who summoned them, which would be good ground of challenge to a juror. Such challenge must be made in the same form, and determined in the same manner, as if made to a juror.

Challenge when jury is summoned but not drawn. for bias in summoning officer.

1065. (§ 338.) If, either upon an exception to the challenge or a denial of the facts, the challenge is allowed, the Court must discharge the jury, so far as the trial of the indictment in question is concerned. If it is disallowed, the Court must direct the jury to be impaneled.

If challenge allowed, jury to be discharged; if disallowed, to be impaneled.

1066. (§ 339.) Before a juror is called, the defendant must be informed by the Court, or under its direction, that if he intends to challenge an individual juror he must do so when the juror appears, and before he is sworn.

Defendant to be informed of his right to challenge individual jurors.

Kinds of challenges to individual juror.

1067. (§ 340.) A challenge to an individual juror is either:

1. Peremptory; or,
2. For cause.

Challenge, when taken

1068. (§ 341.) It must be taken when the juror appears, and before he is sworn to try the cause; but the Court may for cause permit it to be taken after the juror is sworn, and before the jury is completed.

Peremptory challenge, what, and how taken.

1069. (§ 342.) A peremptory challenge can be taken by either party, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the Court must exclude him.

Number of peremptory challenges.

1070. (§ 343.) If the offense charged is punishable with death, or with imprisonment in the State Prison for life, the defendant is entitled to ten and the State to five peremptory challenges. On a trial for any other offense, the defendant is entitled to five and the State to three peremptory challenges.

Definition and kinds of challenge, for cause.

1071. (§ 344.) A challenge for cause may be taken by either party. It is an objection to a particular juror, and is either:

1. General—that the juror is disqualified from serving in any case; or,
2. Particular—that he is disqualified from serving in the action on trial.

General causes of challenge.

1072. (§ 345.) General causes of challenge are:

1. A conviction for felony;
2. A want of any of the qualifications prescribed by law to render a person a competent juror;
3. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him incapable of performing the duties of a juror.

Particular causes of challenge.

1073. (§ 346.) Particular causes of challenge are of two kinds:

1. For such a bias as, when the existence of the Same. facts is ascertained, in judgment of law disqualifies the juror, and which is known in this Code as implied bias;

2. For the existence of a state of mind on the part of the juror in reference to the case, which, in the exercise of a sound discretion on the part of the trier, leads to the inference that he will not act with entire impartiality, and which is known in this Code as actual bias; but a hypothetical opinion, founded on hearsay or information supposed to be true, unaccompanied with malice or ill will, does not disqualify a juror, and is not a cause of challenge for either actual or implied bias.

1074. (§ 347.) A challenge for implied bias may be taken for all or any of the following causes, and for no other: Ground of challenge for actual bias.

1. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant;

2. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages;

3. Being a party adverse to the defendant in a civil action, or having complained against or been accused by him in a criminal prosecution;

4. Having served on the Grand Jury which found the indictment, or on a Coroner's jury which inquired into the death of a person whose death is the subject of the indictment;

5. Having served on a trial jury which has tried another person for the offense charged in the indictment;

Same.

6. Having been one of a jury formerly sworn to try the same indictment, and whose verdict was set aside, or which was discharged without a verdict, after the case was submitted to it;

7. Having served as a juror in a civil action brought against the defendant for the act charged as an offense;

8. Having formed or expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offense charged;

9. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he must neither be permitted nor compelled to serve as a juror.

Exemption
not a
ground of
challenge.

1075. (§ 348.) An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

Causes of
challenge,
how stated.

1076. (§ 349.) In a challenge for implied bias, one or more of the causes stated in Section 1074 must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of Section 1073 must be alleged. In either case the challenge may be oral, but must be entered on the minutes of the Court or of the Phonographic Reporter.

Exceptions
to chal-
lenge, and
denial
thereof.

1077. (§ 350.) The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings must be had thereon as are prescribed in Section 1061, except that if the exception be allowed the juror must be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge.

Challenge,
how tried.

1078. (§ 351.) If the facts are denied, the challenge must be tried as follows:

1. If it be for implied bias, by the Court.
2. If it be for actual bias, by triers.

1079. (§ 352.) The triers are three impartial persons, not on the jury panel, appointed by the Court. All challenges for actual bias must be tried by three triers thus appointed, a majority of whom may decide.

Triers, how appointed.

Majority may decide

1080. (§ 353.) The triers must be sworn generally to inquire whether or not the several persons who may be challenged are biased against the challenging party, and to decide the same truly, according to the evidence.

Oath of triers.

1081. (§ 354.) Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry.

Juror challenged may be examined as a witness

1082. (§ 355.) Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of evidence on the trial of the challenge.

Rules of evidence on trial of challenge.

1083. (§ 356.) On the trial of a challenge for implied bias, the Court must determine the law and the fact, and must either allow or disallow the challenge, and direct an entry accordingly upon the minutes.

Challenge for implied bias, how determined

1084. (§ 357.) On the trial of a challenge for actual bias, when the evidence is concluded the Court must instruct the triers that it is their duty to find the challenge true, if, in their opinion, the evidence warrants the conclusion that the juror has such a bias against the party challenging him as to render him not impartial; and that if, from the evidence, they believe him free from such bias, they must find the challenge not true; that a hypothetical opinion, unaccompanied with malice or ill will, founded on hearsay or information supposed to be true, is of itself no evidence of bias sufficient to disqualify the juror. The Court can give no other instruction.

Instructions to triers on trial of challenge for actual bias.

Verdict of
triers, and
its effect.

1085. (§ 358.) The triers must thereupon find the challenge either true or not true, and their decision is final. If they find it true, the juror must be excluded.

Challenges,
first by the
defendant
and then by
the people.

1086. (§ 359.) All challenges to an individual juror, except peremptory, must be taken, first by the defendant, and then by the people, and each party must exhaust all his challenges before the other begins.

Order of
challenges.

1087. (§ 360.) The challenges of either party for cause need not all be taken at once, but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

1. To the panel;
2. To an individual juror, for a general disqualification;
3. To an individual juror, for an implied bias;
4. To an individual juror, for an actual bias.

Per-
emptory
challenges
may be
taken after
challenges
for cause
on both
sides are
exhausted.

1088. (§ 361.) If all challenges on both sides are disallowed, either party, first the people and then the defendant, may take a peremptory challenge, unless the parties' peremptory challenges are exhausted.

CHAPTER II.

THE TRIAL.

SECTION 1093. Order of trial.

1094. When order of trial may be departed from.

1095. Number of counsel who may argue the case to the jury.

1096. Defendant presumed innocent until the contrary is proved. Reasonable doubt.

1097. When reasonable doubt as to degree, he can be convicted only of lowest.

1098. Separate trials.

SECTION 1099. Discharging one of several defendants before verdict, that he may be a witness.

1100. Same.

1101. Effect of such discharge.

1102. Rules of evidence in civil applicable to criminal cases, except, etc.

1103. Evidence on trial for treason.

1104. Evidence on trial for conspiracy.

1105. When burden of proof shifts in trials for murder.

1106. Evidence on a trial for bigamy.

1107. Evidence upon a trial for forging bank bills, etc. Experts.

1108. Evidence upon trial for abortion and seduction.

1109. Evidence on a trial for selling, etc., lottery tickets.

1110. Evidence of false pretenses.

1111. Conviction cannot be had on uncorroborated testimony of accomplice.

1112. If the evidence show higher offense than the one charged, proceedings to be had thereon.

1113. Court may discharge jury when it has not jurisdiction, etc.

1114. Proceedings, if jury discharged for want of jurisdiction of offense committed out of the State.

1115. Proceedings in such case, when offense committed in the State.

1116. Same.

1117. Proceedings, if jury discharged because the facts do not constitute an offense.

1118. When evidence on either side is closed, Court may advise jury to acquit.

1119. View of premises, when ordered and how conducted.

1120. Knowledge of juror to be declared in Court, and he to be sworn as a witness.

1121. Jurors may be permitted to separate during trial. If kept together, oath of officer.

1122. Jury at each adjournment must be admonished, etc.

1123. Proceedings when juror becomes unable to perform his duties.

1124. Court to decide questions of law arising during trial.

1125. On indictment for libel, jury to determine law and fact.

1126. In all other cases Court to decide questions of law.

1127. Charging the jury.

1128. Jury may decide in Court or retire in custody of officers. Oath of officers.

1129. When defendant on bail appears for trial he may be committed.

1130. If District Attorney fails to attend, Court may appoint.

Order of
trial.

1093. (§ 362.) The jury having been impaneled and sworn, the trial must proceed in the following order:

1. If the indictment is for felony, the Clerk must read it and state the plea of the defendant to the jury. In all other cases this formality may be dispensed with;

2. The District Attorney or other counsel for the people must open the cause and offer the evidence in support of the indictment;

3. The defendant or his counsel may then open the defense, and offer his evidence in support thereof;

4. The parties may then respectively offer rebutting testimony only, unless the Court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case;

5. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the District Attorney or other counsel for the people must open and the District Attorney may conclude the argument;

6. The Judge must then charge the jury, if requested by either party; he may state the testimony and declare the law, but must not charge the jury in respect to matters of fact; such charge must be reduced to writing before it is given, unless by the mutual consent of the parties it is given orally, or unless it is fully taken down by the Reporter of the Court at the time it is given.

When
order of
trial may
be departed
from.

1094. (§ 363.) When the state of the pleadings requires it, or in any other case, for good reasons, and in the sound discretion of the Court, the order prescribed in the last section may be departed from.

Number of
counsel
who may
argue the
case to the
jury.

1095. (§ 364.) If the indictment is for an offense punishable with death, two counsel on each side may argue the cause to the jury. If it is for any other

offense, the Court may, in its discretion, restrict the argument to one counsel on each side.

1096. (§ 365.) A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

Defendant presumed innocent until the contrary is proved. Reasonable doubt.

1097. (§ 366.) When it appears that the defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only.

When reasonable doubt as to degree, he can be convicted only of lowest.

1098. (§ 367.) When two or more defendants are jointly indicted for a felony, any defendant requiring it must be tried separately. In other cases the defendants jointly indicted may be tried separately or jointly, in the discretion of the Court.

Separate trials.

1099. (§ 368.) When two or more persons are included in the same indictment, the Court may, at any time before the defendants have gone into their defense, on the application of the District Attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the people.

Discharging one of several defendants before verdict, that he may be a witness.

1100. (§ 369.) When two or more persons are included in the same indictment, and the Court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged from the indictment before the evidence is closed, that he may be a witness for his codefendant.

Same.

1101. (§ 370.) The order mentioned in the last two sections is an acquittal of the defendant discharged, and is a bar to another prosecution for the same offense.

Effect of such discharge.

Rules of evidence in civil applicable to criminal cases, except, etc.

1102. The rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided in this Code.

Evidence on trial for treason.

1103. (§§ 371, 372.) Upon a trial for treason, the defendant cannot be convicted unless upon the testimony of two witnesses to the same overt act, or upon confession in open Court; nor can evidence be admitted of an overt act not expressly charged in the indictment, nor can the defendant be convicted unless one or more overt acts be expressly alleged therein.

Evidence on trial for conspiracy.

1104. (§ 373.) Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment, nor unless one of the acts alleged is proved; but other overt acts not alleged in the indictment may be given in evidence.

When burden of proof shifts in trials for murder.

1105. Upon a trial for murder, the commission of the homicide by the defendant being proved, the burden of proving circumstances of mitigation, or that justify or excuse it, devolves upon him, unless the proof on the part of the prosecution tends to show that the crime committed only amounts to manslaughter, or that the defendant was justifiable or excusable.

Evidence on a trial for bigamy.

1106. Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate, or other record evidence thereof, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when the second marriage took place out of this State, proof of that fact, accompanied with proof of cohabitation thereafter in this State, is sufficient to sustain the charge.

Evidence upon a trial for forging bank bills, etc.

1107. Upon a trial for forging any bill or note purporting to be the bill or note of an incorporated company or bank, or for passing, or attempting to pass, or

having in possession with intent to pass, any such forged bill or note, it is not necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but it may be proved by general reputation; and persons of skill are competent witnesses to prove that such bill or note is forged or counterfeited.

Experts.

1108. Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, or for inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of twenty-five years, for the purpose of prostitution, or aiding or assisting therein, the defendant cannot be convicted upon the testimony of the woman upon or with whom the offense was committed, unless she is corroborated by other evidence.

Evidence upon trial for abortion and seduction.

1109. Upon a trial for the violation of any of the provisions of Chapter IX, Title IX, Part I of this Code, it is not necessary to prove the existence of any lottery in which any lottery ticket purports to have been issued, or to prove the actual signing of any such ticket or share, or pretended ticket or share, of any pretended lottery, nor that any lottery ticket, share, or interest was signed or issued by the authority of any manager, or of any person assuming to have authority as manager; but in all cases proof of the sale, furnishing, bartering, or procuring of any ticket, share, or interest therein, or of any instrument purporting to be a ticket, or part or share of any such ticket, is evidence that such share or interest was signed and issued according to the purport thereof.

Evidence on a trial for selling, etc., lottery tickets.

1110. (§ 376.) Upon a trial for having, with an intent to cheat or defraud another designedly, by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person any money, personal property, or valuable thing,

Evidence of false pretenses.

the defendant cannot be convicted if the false pretense was expressed in language, unaccompanied by a false token or writing, unless the pretense, or some note or memorandum thereof be in writing, subscribed by or in the handwriting of the defendant, or unless the pretense be proven by the testimony of two witnesses, or that of one witness, and corroborating circumstances; but this section shall not apply to a prosecution for falsely representing or personating another, and, in such assumed character, marrying, or receiving any money or property.

Conviction cannot be had on uncorroborated testimony of accomplice

1111. (§ 375.) A conviction cannot be had on the testimony of an accomplice, unless he is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration is not sufficient, if it merely shows the commission of the offense, or the circumstances thereof.

If the evidence show higher offense than the one charged, proceedings to be had thereon.

1112. (§§ 379, 380.) If it appears by the testimony that the facts proved constitute an offense of a higher nature than that charged in the indictment, the Court may direct the jury to be discharged, and all proceedings on the indictment to be suspended, and may order the defendant to be committed or continued on, or admitted to bail to answer any indictment which may be found against him for the higher offense. If an indictment for the higher offense is found by a Grand Jury impaneled within a year next thereafter, he must be tried thereon, and a plea of former acquittal to such last found indictment is not sustained by the fact of the discharge of the jury on the first indictment.

Court may discharge jury when it has not jurisdiction, etc.

1113. (§ 381.) The Court may direct the jury to be discharged where it appears that it has not jurisdiction of the offense, or that the facts charged in the

indictment do not constitute an offense punishable by law.

1114. (§ 382.) If the jury is discharged because the Court has not jurisdiction of the offense charged in the indictment, and it appears that it was committed out of the jurisdiction of this State, the defendant must be discharged.

Proceedings, if jury discharged for want of jurisdiction of offense committed out of the State.

1115. (§§ 383, 384.) If the offense was committed within the exclusive jurisdiction of another county of this State, the Court must direct the defendant to be committed for such time as it deems reasonable, to await a warrant from the proper county for his arrest; or if the offense is a misdemeanor only, it may admit him to bail in an undertaking, with sufficient securities, that he will, within such time as the Court may appoint, render himself amenable to a warrant for his arrest from the proper county, and, if not sooner arrested thereon, will attend at the office of the Sheriff of the county where the trial was had, at a certain time particularly specified in the undertaking, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the Court may fix, to be mentioned in the undertaking; and the Clerk must forthwith transmit a certified copy of the indictment, and of all the papers filed in the action, to the District Attorney of the proper county, the expense of which transmission is chargeable to that county.

Proceedings in such case, when offense committed in the State.

1116. (§§ 385, 386.) If the defendant is not arrested on a warrant from the proper county, as provided in Section 1115, he must be discharged from custody, or his bail in the action is exonerated, or money deposited instead of bail must be refunded, as the case may be, and the sureties in the undertaking, as mentioned in that section, must be discharged. If

Same.

he is arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county on a warrant of arrest issued by a magistrate.

Proceedings, if jury discharged because the facts do not constitute an offense.

1117. (§§ 387, 388.) If the jury is discharged because the facts as charged do not constitute an offense punishable by law, the Court must order that the defendant, if in custody, be discharged; or if admitted to bail, that his bail be exonerated; or if he has deposited money instead of bail, that the money be refunded to him, unless in its opinion a new indictment can be framed upon which the defendant can be legally convicted, in which case it may direct that the case be submitted to the same or another Grand Jury; and if the Court directs that the case be submitted anew, the same proceedings must be had thereon as are prescribed in Section 998.

When evidence on either side is closed, Court may advise jury to acquit.

1118. (§ 389.) If, at any time after the evidence on either side is closed, the Court deems it insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the jury are not bound by the advice.

View of premises, when ordered and how conducted.

1119. (§ 390.) When, in the opinion of the Court, it is proper that the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the Sheriff, to the place, which must be shown to them by a person appointed by the Court for that purpose; and the Sheriff must be sworn to suffer no person to speak or communicate with the jury, nor to do so himself, on any subject connected with the trial, and to return them into Court without unnecessary delay, or at a specified time.

1120. (§ 392.) If a juror has any personal knowledge respecting a fact in controversy in a cause, he

must declare the same in open Court during the trial. If, during the retirement of the jury, a juror declare a fact which could be evidence in the cause, as of his own knowledge, the jury must return into Court. In either of these cases, the juror making the statement must be sworn as a witness and examined in the presence of the parties.

Knowledge of juror to be declared in Court, and he to be sworn as a witness.

1121. (§ 393.) The jurors sworn to try an indictment may, at any time before the submission of the cause to the jury, in the discretion of the Court, be permitted to separate or be kept in charge of a proper officer. The officer must be sworn to keep the jurors together until the next meeting of the Court, to suffer no person to speak to them or communicate with them, nor to do so himself, on any subject connected with the trial, and to return them into Court at the next meeting thereof.

Jurors may be permitted to separate during trial.

If kept together, oath of officer.

1122. (§ 394.) The jury must also, at each adjournment of the Court, whether permitted to separate or kept in charge of officers, be admonished by the Court that it is their duty not to converse among themselves or with any one else on any subject connected with the trial, or to form or express any opinion thereon until the cause is finally submitted to them.

Jury at each adjournment must be admonished, etc.

1123. (§ 395.) If, before the conclusion of the trial, a juror becomes sick, so as to be unable to perform his duty, the Court may order him to be discharged. In that case a new juror may be sworn and the trial begin anew, or the jury may be discharged and a new jury then or afterwards impaneled.

Proceedings when juror becomes unable to perform his duties.

1124. (§ 396.) The Court must decide all questions of law which arise in the course of a trial.

Court to decide questions of law arising during trial.

On indictment for libel, jury to determine law and fact.

1125. (§ 397.) On the trial of an indictment for libel, the jury have the right to determine the law and the fact.

In all other cases Court to decide questions of law.

1126. (§ 398.) On the trial of an indictment for any other offense than libel, questions of law are to be decided by the Court, questions of fact by the jury; and, although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the Court.

Charging the jury.

1127. (§§ 399, 400, 401.) In charging the jury, the Court must state to them all matters of law necessary for their information. Either party may present to the Court any written charge and request that it be given. If the Court thinks it correct and pertinent, it must be given; if not, it must be refused. Upon each charge presented and given or refused, the Court must indorse and sign its decision. If part be given and part refused, the Court must distinguish, showing by the indorsement what part of the charge was given and what part refused.

Jury may decide in Court or retire in custody of officer. Oath of officers.

1128. (§ 402.) After hearing the charge, the jury may either decide in Court or may retire for deliberation. If they do not agree without retiring, an officer must be sworn to keep them together in some private and convenient place, and not to permit any person to speak to or communicate with them, nor to do so himself, unless by order of the Court, or to ask them whether they have agreed upon a verdict, and to return them into Court when they have so agreed, or when ordered by the Court.

When defendant on bail appears for trial he may be committed

1129. (§ 403.) When a defendant who has given bail appears for trial, the Court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer

of the county, to abide the judgment or further order of the Court, and he must be committed and held in custody accordingly.

1130. If the District Attorney fails to attend at the trial, the Court must appoint some attorney at law to perform the duties of the District Attorney on such trial.

If District Attorney fails to attend, Court may appoint.

CHAPTER III.

CONDUCT OF THE JURY AFTER THE CAUSE IS SUBMITTED TO THEM.

SECTION 1135. Room and accommodations for the jury after retirement, how provided.

1136. Accommodations for jury when kept together.

1137. What papers the jury may take with them.

1138. If after retirement may return into Court for information.

1139. If juror after retirement become sick, etc., jury to be discharged.

1140. Not to be discharged for any other cause, unless there is no reasonable probability that they can agree.

1141. When jury discharged or prevented from giving a verdict, cause to be again tried.

1142. Court may adjourn during absence of jury, but deemed open for all purposes connected with cause.

1143. Final adjournment discharges jury.

1135. (§ 404.) A room must be provided by the Supervisors of each county for the use of the jury, upon their retirement for deliberation, with suitable furniture, fuel, lights, and stationery. If the Supervisors neglect, the Court may order the Sheriff to do so, and the expenses incurred by him in carrying the order into effect, when certified by the Court, are a county charge.

Room and accommodations for the jury after retirement, how provided.

1136. (§ 405.) While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they must be provided by

Accommodations for jury when kept together.

the Sheriff, at the expense of the county, with suitable and sufficient food and lodging.

What papers the jury may take with them.

1137. (§§ 406, 407.) Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the cause, or copies of such public records or private documents given in evidence as ought not, in the opinion of the Court, to be taken from the person having them in possession. They may also take with them the written instructions given, and notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

If after retirement may return into Court for information.

1138. (§ 408.) After the jury have retired for deliberation, if there is any disagreement between them as to the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into Court. Upon being brought into Court, the information required must be given in the presence of, or after notice to, the District Attorney and the defendant or his counsel.

If juror after retirement become sick, etc., jury to be discharged.

1139. (§ 409.) If, after the retirement of the jury, one of them be taken so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept for deliberation, the jury may be discharged.

Not to be discharged for any other cause, unless there is no reasonable probability that they can agree.

1140. (§ 410.) Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict and rendered it in open Court, unless by consent of both parties, entered upon the minutes, or unless, at the expiration of such time as the Court may deem proper, it satisfactorily appears that there is no reasonable probability that the jury can agree.

1141. (§ 411.) In all cases where a jury are discharged or prevented from giving a verdict by reason of an accident or other cause, except where the defendant is discharged from the indictment during the progress of the trial or after the cause is submitted to them, the cause may be, again tried at the same or another term.

When jury discharged or prevented from giving a verdict, cause to be again tried.

1142. (§ 412.) While the jury are absent the Court may adjourn from time to time, as to other business, but it must nevertheless be open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged.

Court may adjourn during absence of jury, but deemed open for all purposes connected with cause.

1143. (§ 413.) A final adjournment of the Court discharges the jury.

Final adjournment discharges jury.

CHAPTER IV.

THE VERDICT.

SECTION 1147. Return of jury.

- 1148. Appearance of defendant.
- 1149. Manner of taking verdict.
- 1150. Verdict may be general or special.
- 1151. General verdict.
- 1152. Special verdict.
- 1153. Special verdict, how rendered.
- 1154. Form of special verdict.
- 1155. Judgment on special verdict.
- 1156. When special verdict defective, new trial to be ordered.
- 1157. Jury to find degree of crime.
- 1158. Jury may find upon charge of previous conviction.
- 1159. Jury may convict of lesser offense, or of attempt.
- 1160. Verdict as to some defendants, and another trial as to others.
- 1161. In what cases Court may direct a reconsideration of the verdict.
- 1162. When judgment may be given on informal verdict.
- 1163. Polling the jury.
- 1164. Recording the verdict.

SECTION 1165. Defendant, when to be discharged or detained after acquittal.

1166. Proceedings upon general verdict of conviction or a special verdict.

Return of jury.

1147. (§ 414.) When the jury have agreed upon their verdict they must be conducted into Court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that case the action may be again tried at the same, or another term.

• Appearance of defendant.

1148. (§ 415.) If indicted for a felony, the defendant must, before the verdict is received, appear in person. If for a misdemeanor, the verdict may be rendered in his absence.

Manner of taking verdict.

1149. (§ 416.) When the jury appear they must be asked by the Court, or Clerk, whether they have agreed upon their verdict, and if the foreman answers in the affirmative, they must, on being required, declare the same.

Verdict may be general or special.

1150. (§ 417.) The jury may render a general verdict, or, when they are in doubt as to the legal effect of the facts proved, they may, except upon an indictment for libel, find a special verdict.

General verdict.

1151. (§ 418.) A general verdict upon a plea of not guilty is either "guilty" or "not guilty," which imports a conviction or acquittal of the offense charged in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the people" or "for the defendant."

Special verdict.

1152. (§ 419.) A special verdict is that by which the jury find the facts only, leaving the judgment to the Court. It must present the conclusions of fact as established by the evidence, and not the evidence to prove them, and these conclusions of fact must be so

presented as that nothing remains to the Court but to draw conclusions of law upon them.

1153. (§ 420.) The special verdict must be reduced to writing by the jury, or in their presence entered upon the minutes of the Court, read to the jury and agreed to by them, before they are discharged.

Special
verdict,
how
rendered.

1154. (§ 421.) The special verdict need not be in any particular form, but is sufficient if it present intelligibly the facts found by the jury.

Form of
special
verdict.

1155. (§ 422.) The Court must give judgment upon the special verdict as follows:

Judgment
on special
verdict.

1. If the plea is not guilty, and the facts prove the defendant guilty of the offense charged in the indictment, or of any other offense of which he could be convicted under that indictment, judgment must be given accordingly. But if otherwise, judgment of acquittal must be given.

2. If the plea is a former conviction or acquittal of the same offense, the Court must give judgment of acquittal or conviction, as the facts prove or fail to prove the former conviction or acquittal.

1156. (§ 423.) If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the Court to give judgment, or if they find the evidence of facts merely, and not the conclusions of fact, from the evidence, as established to their satisfaction, the Court must order a new trial.

When
special
verdict
defective,
new trial
to be
ordered.

1157. Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of the crime of which he is guilty.

Jury to find
degree of
crime.

1158. Whenever the fact of a previous conviction is charged in an indictment, the jury, if they find a

Jury may
find upon
charge of
previous
conviction.

verdict of guilty, must also find whether or not the defendant had suffered such previous conviction.

Jury may
convict of
lesser
offense, or
of attempt.

1159. (§ 424.) The jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged in the indictment, or of an attempt to commit the offense.

Verdict as
to some
defendants,
and
another
trial as to
others.

1160. (§ 425.) On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the others may be tried by another jury.

In what
cases Court
may direct
a reconsi-
deration of
the verdict.

1161. (§§ 426, 427.) When there is a verdict of conviction, in which it appears to the Court that the jury have mistaken the law, the Court may explain the reason for that opinion and direct the jury to reconsider their verdict, and if, after the reconsideration, they return the same verdict, it must be entered; but when there is a verdict of acquittal, the Court cannot require the jury to reconsider it. If the jury render a verdict which is neither general nor special, the Court may direct them to reconsider it, and it cannot be recorded until it is rendered in some form from which it can be clearly understood that the intent of the jury is either to render a general verdict or to find the facts specially and to leave the judgment to the Court.

When
judgment
may be
given on
informal
verdict.

1162. (§ 428.) If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it must be entered in the terms in which it is found, and the Court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against

the defendant upon the issue, or judgment is given against him on a special verdict.

1163. (§ 429.) When a verdict is rendered, and before it is recorded, the jury may be polled, at the request of either party, in which case they must be severally asked whether it is their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation.

Polling the jury.

1164. (§ 430.) When the verdict given is such as the Court may receive, the Clerk must immediately record it in full upon the minutes, read it to the jury, and inquire of them whether it is their verdict. If any juror disagree, the fact must be entered upon the minutes and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury must be discharged from the case.

Recording the verdict.

1165. (§ 431.) If judgment of acquittal is given on a general verdict, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given, except where the acquittal is because of a variance between the proof and the indictment, which may be obviated by a new indictment, the Court may order his detention, to the end that a new indictment may be preferred, in the same manner and with like effect as provided in Section 1117.

Defendant, when to be discharged or detained after acquittal.

1166. (§ 432.) If a general verdict is rendered against the defendant, or a special verdict is given, he must be remanded, if in custody, or if on bail he may be committed to the proper officer of the county to await the judgment of the Court upon the verdict. When committed his bail is exonerated, or if money is deposited instead of bail it must be refunded to the defendant.

Proceedings upon general verdict of conviction or a special verdict.

CHAPTER V.

BILLS OF EXCEPTION.

SECTION 1170. In what cases.

1171. When to be settled and signed.

1172. Exceptions not taken on the trial, but which may be taken by both parties.

1173. Exceptions not taken on the trial, but which may be taken by the defendant.

1174. Exceptions mentioned in two preceding sections, how and when settled.

1175. What bill of exceptions is to contain.

1176. Written charges need not be excepted to.

In what cases.

1170. (§ 433.) On the trial of an indictment, exceptions may be taken by the defendant to a decision of the Court upon a matter of law, in any of the following cases:

1. In disallowing a challenge to the panel of the jury, or to an individual juror, for implied bias;

2. In admitting or rejecting witnesses or testimony, or in charging the triers on the trial of a challenge to a juror for actual bias;

3. In admitting or rejecting witnesses or testimony, or in deciding any question of law not a matter of discretion, or in charging or instructing the jury upon the law on the trial of the issue.

When to be settled and signed.

1171. (§ 434.) A bill containing the exceptions must be settled and signed by the Judge, and filed with the Clerk within ten days after the trial of the cause, unless further time is granted by the Judge or by a Justice of the Supreme Court.

Exceptions not taken on the trial, but which may be taken by both parties.

1172. Exceptions may be taken by either party to a decision of the Court or Judge upon a matter of law:

1. In granting or refusing a motion in arrest of judgment;

2. In granting or refusing a motion for a new trial;

3. In making, or refusing to make, an order after judgment, affecting the substantial rights of the parties.

1173. Exceptions may be taken by the defendant to a decision of the Court upon a matter of law:

Exceptions not taken on the trial, but which may be taken by the defendant.

1. In refusing to grant a motion for a change of the place of trial;

2. In refusing to postpone the trial on motion of the defendant.

1174. A bill containing the exceptions mentioned in the last two sections must be settled by the Judge, and filed with the Clerk of the Court within ten days after the making of the order or ruling complained of.

Exceptions mentioned in two preceding sections, how and when settled.

1175. (§§ 436, 437.) A bill of exceptions must contain so much of the evidence only as is necessary to present the questions of law upon which the exceptions were taken; and the Judge must, upon the settlement of the bill, whether agreed to by the parties or not, strike out all other matters contained therein.

What bill of exceptions is to contain.

1176. (§ 438.) When written charges have been presented, given, or refused, or when the charges have been taken down by the Reporter, the questions presented in such charges need not be excepted to or embodied in a bill of exceptions, but the written charges or the report, with the indorsements showing the action of the Court, form part of the record, and any error in the decision of the Court thereon may be taken advantage of on appeal, in like manner as if presented in a bill of exceptions.

Written charges not to be excepted to.

CHAPTER VI.

NEW TRIALS.

SECTION 1179. New trial defined.

1180. Its effect.

1181. In what cases it may be granted.

1182. Application for, when made.

New trial
defined.

1179. (§ 439.) A new trial is a reëxamination of the issue in the same Court, before another jury, after a verdict has been given.

Its effect.

1180. (§ 439.) The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to either in evidence or in argument.

In what
cases it
may be
granted.

1181. (§ 440.) When a verdict has been rendered against the defendant, the Court may, upon his application, grant a new trial, in the following cases only:

1. When the trial has been had in his absence, if the indictment is for a felony;

2. When the jury has received any evidence out of Court other than that resulting from a view of the premises;

3. When the jury has separated without leave of the Court, after retiring to deliberate upon their verdict, or been guilty of any misconduct by which a fair and due consideration of the case has been prevented;

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors;

5. When the Court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial;

6. When the verdict is contrary to law or evidence;

7. When new evidence is discovered material to the defendant, and which he could not, with reasonable

diligence, have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the Court may postpone the hearing of the motion for such length of time as, under all the circumstances of the case, may seem reasonable.

1182. (§ 441.) The application for a new trial must be made before judgment. Application for, when made

CHAPTER VII.

ARREST OF JUDGMENT.

SECTION 1185. Motion in arrest of judgment defined. Upon what defects founded, and when made.

1186. Court may arrest judgment without motion.

1187. Effect of arresting judgment.

1188. Defendant, when to be held or discharged.

1185. (§§ 442, 444.) A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant, on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment mentioned in Section 1004, unless the objection to the indictment has been waived by a failure to demur, and must be made before or at the time the defendant is called for judgment. Motion in arrest of judgment defined.
Upon what defects founded, and when made

1186. (§ 443.) The Court may also, on its own view of any of these defects, arrest the judgment without motion. Court may arrest judgment without motion.

Effect of
arresting
judgment.

1187. (§ 445.) The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found.

Defendant,
when to be
held or
discharged.

1188. (§ 446.) If, from the evidence on the trial, there is reason to believe the defendant guilty, and a new indictment can be framed upon which he may be convicted, the Court may order him to be recommitted to the officer of the proper county, or admitted to bail anew, to answer the new indictment. If the evidence shows him guilty of another offense, he must be committed or held thereon, and in neither case shall the verdict be a bar to another prosecution or indictment. But if no evidence appears sufficient to charge him with any offense, he must, if in custody, be discharged; or if admitted to bail, his bail is exonerated; or if money has been deposited instead of bail, it must be refunded to the defendant; and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment was founded.

TITLE VIII.

OF JUDGMENT AND EXECUTION.

CHAPTER I. *The judgment.*

II. *The execution.*

CHAPTER I.

THE JUDGMENT.

SECTION 1191. Appointing time for judgment.

1192. Upon plea of guilty, Court must determine degree.

1193. Presence of defendant.

SECTION 1194. When defendant in custody, how brought before the Court for judgment.

1195. How brought before the Court when on bail.

1196. Bench warrant to issue.

1197. Form of bench warrant.

1198. Warrant, how served.

1199. Arrest of defendant.

1200. Arraignment of defendant for judgment.

1201. What cause may be shown against the judgment.

1202. If no cause shown, judgment to be pronounced.

1203. Court may summarily inquire into circumstances in aggravation or mitigation of punishment.

1204. Proof of former conviction, or of facts, etc., in mitigation, etc., how made.

1205. Duration of imprisonment on judgment to pay a fine.

1206. Judgment to pay a fine constitutes a lien.

1207. Entry of judgment and judgment roll.

1191. (§§ 447, 448.) After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, if the judgment is not arrested or a new trial granted, the Court must appoint a time for pronouncing judgment, which must be at least two days after the verdict, if the Court intend to remain in session so long; or if not, as remote a time as can reasonably be allowed. But in no case can the judgment be rendered in less than six hours after the verdict.

Appointing time for judgment.

1192. Upon a plea of guilty of a crime distinguished or divided into degrees, the Court must, before passing sentence, determine the degree.

Upon plea of guilty, Court must determine degree.

1193. (§ 449.) For the purpose of judgment, if the conviction is for felony, the defendant must be personally present; if for a misdemeanor, judgment may be pronounced in his absence.

Presence of defendant.

1194. (§ 450.) When the defendant is in custody, the Court may direct the officer in whose custody he is to bring him before it for judgment, and the officer must do so.

When defendant in custody, how brought before the Court for judgment.

How
brought
before the
Court when
on bail.

1195. (§ 451.) If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear for judgment when his personal appearance is necessary, the Court, in addition to the forfeiture of the undertaking of bail, or of the money deposited, may direct the Clerk to issue a bench warrant for his arrest.

Bench
warrant to
issue.

1196. (§ 452.) The Clerk, on the application of the District Attorney, may, at any time after the order, whether the Court be sitting or not, issue a bench warrant into one or more counties.

Form of
bench
warrant.

1197. (§ 453.) The bench warrant must be substantially in the following form:

COUNTY OF —.

The People of the State of California, to any Sheriff, Constable, Marshal, or Policeman in this State:

A. B., having been on the — day of —, A. D. eighteen hundred and —, duly convicted in the County Court (or District Court, or Municipal Court, as the case may be) of the County of —, of the crime of — (designating it generally), you are therefore commanded forthwith to arrest the above named A. B., and bring him before that Court for judgment; or if the Court has adjourned for the term, that you deliver him into the custody of the Sheriff of the County of —.

Given under my hand, with the seal of said Court affixed, this — day of —, A. D. eighteen hundred and —.

By order of the Court.

[SEAL.]

E. F., Clerk.

Warrant,
how served

1198. (§ 454.) The bench warrant may be served in any county in the same manner as a warrant of arrest, except that when served in another county it need not be indorsed by a magistrate of that county.

• Arrest of
defendant.

1199. (§ 455.) Whether the bench warrant is served in the county in which it was issued or in another county, the officer must arrest the defendant and bring him before the Court or commit him to the

officer mentioned in the warrant, according to the command thereof.

1200. (§ 456.) When the defendant appears for judgment he must be informed by the Court, or by the Clerk, under its direction, of the nature of the indictment and of his plea, and the verdict, if any thereon, and must be asked whether he has any legal cause to show why judgment should not be pronounced against him.

Arraign-
ment of de-
fendant for
judgment.

1201. (§ 457.) He may show, for cause against the judgment:

What
causes may
be shown
against the
judgment.

1. That he is insane; and if, in the opinion of the Court, there is reasonable ground for believing him to be insane, the question of insanity must be tried as provided in Chapter VI, Title X, Part II of this Code. If, upon the trial of that question, the jury find that he is sane, judgment must be pronounced, but if they find him insane, he must be committed to the State Lunatic Asylum until he becomes sane; and when notice is given of that fact, as provided in Section 1372, he must be brought before the Court for judgment;

2. That he has good cause to offer, either in arrest of judgment or for a new trial; in which case the Court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment or for a new trial.

1202. (§ 458.) If no sufficient cause is alleged or appears to the Court why judgment should not be pronounced, it must thereupon be rendered.

If no cause
shown,
judgment
to be pro-
nounced.

1203. After a plea or verdict of guilty, where a discretion is conferred upon the Court as to the extent of the punishment, the Court, upon the oral suggestion of either party that there are circumstances which may be properly taken into view either in aggravation or mitigation of the punishment, may, in its discretion,

Court may
summarily
inquire
into cir-
cumstances
in aggrava-
tion or
mitigation
of punish-
ment.

hear the same summarily, at a specified time, and upon such notice to the adverse party as it may direct.

Proof of former conviction or of facts, etc., in mitigation, etc., how made.

1204. The circumstances must be presented by the testimony of witnesses examined in open Court, except that when a witness is so sick or infirm as to be unable to attend, his deposition may be taken by a magistrate of the county, out of Court, upon such notice to the adverse party as the Court may direct. No affidavit or testimony, or representation of any kind, verbal or written, can be offered to or received by the Court, or a Judge thereof, in aggravation or mitigation of the punishment, except as provided in this and the preceding section.

Duration of imprisonment on judgment to pay a fine

1205. (§ 460.) A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied, specifying the extent of the imprisonment, which cannot exceed one day for every two dollars of the fine.

Judgment to pay a fine constitutes a lien.

1206. (§ 461.) A judgment that the defendant pay a fine constitutes a lien, in like manner as a judgment for money rendered in a civil action.

Entry of judgment and judgment roll.

1207. (§ 462.) When judgment upon a conviction is rendered, the Clerk must enter the same upon the minutes, stating briefly the offense for which the conviction was had, and the fact of a prior conviction (if one), and must within five days annex together and file the following papers, which constitute a record of the action:

1. A copy of the minutes of a challenge interposed by the defendant to the panel of the Grand Jury, or to an individual Grand Juror, and the proceedings and decision thereon;

2. The indictment and a copy of the minutes of the plea or demurrer;

3. A copy of the minutes of a challenge interposed

to the panel of the trial jury or to an individual juror, Same.
and the proceedings and decision thereon;

4. A copy of the minutes of the trial;
5. A copy of the minutes of the judgment;
6. The bill of exceptions, if there be one;
7. The written charges asked of the Court, and refused, if there be any;
8. A copy of all charges given and of the indorsements thereon.

CHAPTER II.

THE EXECUTION.

SECTION 1213. Authority for the execution of a judgment, other than of death.

1214. If for fine alone, execution to issue as in civil cases.

1215. Judgment of fine and imprisonment, by whom and how executed.

1216. Duty of Sheriff on receiving copy of judgment of imprisonment.

1217. Warrant of execution upon judgment of death. Time of execution.

1218. Judge to transmit statement of conviction and testimony to Governor.

1219. Governor may require opinion of Justices of Supreme Court, etc., thereon.

1220. Judgment of death, when suspended.

1221. If reason to suppose defendant insane, jury to inquire into it; how and by whom ordered.

1222. Duty of District Attorney upon inquisition.

1223. Inquisition, how certified and filed.

1224. Proceedings upon finding of jury.

1225. Proceedings when female is supposed to be pregnant.

1226. Proceedings upon the finding of the jury.

1227. Proceedings when judgment of death remaining in force has not been executed.

1228. Punishment of death, how inflicted.

1229. Execution, where to take place and who to be present.

1230. Return upon death warrant.

1213. (§ 463.) When a judgment, other than of death, has been pronounced, a certified copy of the entry thereof upon the minutes must be forthwith fur-

Authority
for the exe-
cution of a
judgment,
other than
of death.

nished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution.

If for fine alone, execution to issue as in civil cases.

1214. (§ 464.) If the judgment is for a fine alone, execution may be issued thereon as on a judgment in a civil action.

Judgment of fine and imprisonment, by whom and how executed.

1215. (§ 465.) If the judgment is for imprisonment, or a fine, and imprisonment until it be paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment is complied with.

Duty of Sheriff on receiving copy of judgment of imprisonment.

1216. If the judgment is for imprisonment in the State Prison, the Sheriff of the county must, upon receipt of a certified copy thereof, take and deliver the defendant to the Warden of the State Prison. He must also deliver to the Warden the certified copy of the judgment, and take from the Warden a receipt for the defendant.

Warrant of execution upon judgment of death.

Time of execution.

1217. (§ 466.) When judgment of death is rendered, a warrant, signed by the Judge, and attested by the Clerk under the seal of the Court, must be drawn and delivered to the Sheriff. It must state the conviction and judgment, and appoint a day on which the judgment is to be executed, which must not be less than thirty nor more than sixty days from the time of judgment.

Judge to transmit statement of conviction and testimony to Governor

1218. (§ 467.) The Judge of the Court at which a conviction requiring judgment of death is had, must, immediately after the conviction, transmit to the Governor, by mail or otherwise, a statement of the conviction and judgment, and of the testimony given at the trial.

1219. (§ 468.) The Governor may thereupon require the opinion of the Justices of the Supreme Court and of the Attorney General, or any of them, upon the statement so furnished.

Governor may require opinion of Justices of Supreme Court, etc., thereon.

1220. (§ 469.) No Judge, Court, or officer, other than the Governor, can suspend the execution of a judgment of death, except the Sheriff, as provided in the six succeeding sections, unless an appeal is taken.

Judgment of death, when suspended.

1221. (§ 470.) If, after judgment of death, there is good reason to suppose that the defendant has become insane, the Sheriff of the county, with the concurrence of the Judge of the Court by which the judgment was rendered, may summon from the list of jurors selected by the Supervisors for the year a jury of twelve persons to inquire into the supposed insanity, and must give immediate notice thereof to the District Attorney of the county.

If reason to suppose defendant insane, jury to inquire into it; how and by whom ordered.

1222. (§ 471.) The District Attorney must attend the inquisition, and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the Grand Jury, and disobedience thereto may be punished in like manner as disobedience to process issued by the Court.

Duty of District Attorney upon inquisition

1223. (§ 472.) A certificate of the inquisition must be signed by the jurors and the Sheriff, and filed with the Clerk of the Court in which the conviction was had.

Inquisition, how certified and filed.

1224. (§§ 473, 474.) If it is found by the inquisition that the defendant is sane, the Sheriff must execute the judgment; but if it is found that he is insane, the Sheriff must suspend the execution of the judgment until he receives a warrant from the Governor or from

Proceedings upon finding of jury.

the Judge of the Court by which the judgment was rendered directing the execution of the judgment. If the inquisition finds that the defendant is insane, the Sheriff must immediately transmit it to the Governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment.

Proceed-
ings when
female is
supposed
to be
pregnant.

1225. (§ 475.) If there is good reason to suppose that a female against whom a judgment of death is rendered is pregnant, the Sheriff of the county, with the concurrence of the Judge of the Court by which the judgment was rendered, may summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice thereof must be given to the District Attorney of the county, and the provisions of Sections 1222 and 1223 apply to the proceedings upon the inquisition.

Proceed-
ings upon
the finding
of the jury.

1226. (§§ 476, 477.) If it is found by the inquisition that the female is not pregnant, the Sheriff must execute the judgment; if it is found that she is pregnant, the Sheriff must suspend the execution of the judgment, and transmit the inquisition to the Governor. When the Governor is satisfied that the female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

Proceed-
ings when
judgment
of death
remaining
in force has
not been
executed.

1227. (§§ 478, 479.) If for any reason a judgment of death has not been executed and it remains in force, the Court in which the conviction was had, on the application of the District Attorney, must order the defendant to be brought before it, or, if he is at large, a warrant for his apprehension may be issued. Upon the defendant being brought before the Court it must inquire into the facts, and if no legal reasons exist against the execution of the judgment, must make an order that the Sheriff execute the judgment at a

specified time. The Sheriff must execute the judgment accordingly.

1228. (§ 480.) The punishment of death must be inflicted by hanging the defendant by the neck until he is dead. Punishment of death, how inflicted.

1229. A judgment of death must be executed within the walls or yard of a jail, or some convenient private place in the county. The Sheriff of the county must be present at the execution, and must invite the presence of a physician, the District Attorney of the county, and at least twelve reputable citizens, to be selected by him; and he shall, at the request of the defendant, permit such ministers of the gospel, not exceeding two, as the defendant may name, and any persons, relatives or friends, not to exceed five, to be present at the execution, together with such peace officers as he may think expedient, to witness the execution. But no other persons than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness the same. Execution, where to take place and who to be present.

1230. After the execution, the Sheriff must make a return upon the death warrant, showing the time, mode, and manner in which it was executed. Return upon death warrant.

TITLE IX.

OF APPEALS TO THE SUPREME COURT.

CHAPTER I. *Appeals, when allowed and how taken, and the effect thereof.*

II. *Dismissing an appeal for irregularity.*

III. *Argument of the appeal.*

IV. *Judgment upon appeal.*

CHAPTER I.

APPEALS, WHEN ALLOWED AND HOW TAKEN, AND THE EFFECT THEREOF.

SECTION 1235. Who may appeal. Appeal to be taken on questions of law alone.

1236. Parties, how designated on appeal.

1237. In what cases an appeal may be taken by the defendant.

1238. In what cases by the people.

1239. Appeals, within what time to be taken.

1240. Appeal, how taken.

1241. When notice may be served by publication.

1242. Effect of an appeal by the people.

1243. Effect of an appeal by the defendant.

1244. Same.

1245. Same.

1246. Duty of Clerks upon appeal.

Who may
appeal.
Appeal to
be taken on
questions
of law
alone.

1235. (§§ 481, 482.) Either party in a criminal action amounting to a felony may appeal to the Supreme Court, on questions of law alone, as prescribed in this Chapter.

Parties,
how
designated
on appeal.

1236. (§ 483.) The party appealing is known as the appellant, and the adverse party as the respondent, but the title of the action is not changed in consequence of the appeal.

In what
cases an
appeal may
be taken
by the
defendant.

1237. (§ 481.) An appeal may be taken by the defendant:

1. From a final judgment of conviction;
2. From an order denying a motion for a new trial;
3. From any order made after judgment, affecting the substantial rights of the party.

In what
cases by
the people.

1238. (§ 481.) An appeal may be taken by the people:

1. From a judgment for the defendant on a demurrer to the indictment;
2. From an order granting a new trial;
3. From an order arresting judgment;

4. From any order made after judgment, affecting the substantial rights of the people.

1239. (§ 485.) An appeal from a judgment must be taken within one year after its rendition, and from an order, within sixty days after it is made.

Appeals,
within
what time
to be taken.

1240. (§§ 486, 487, 488.) An appeal is taken by filing with the Clerk of the Court in which the judgment or order appealed from is entered or filed, a notice stating the appeal from the same, and serving a copy thereof upon the attorney of the adverse party.

Appeal,
how taken.

1241. (§§ 488, 489.) If personal service of the notice cannot be made, the Judge of the Court in which the action was tried, upon proof thereof, may make an order for the publication of the notice in some newspaper for a period not exceeding thirty days; such publication is equivalent to personal service.

When
notice may
be served
by publica-
tion.

1242. (§ 490.) An appeal taken by the people in no case stays or affects the operation of a judgment in favor of the defendant, until judgment is reversed.

Effect of an
appeal by
the people.

1243. An appeal to the Supreme Court from a judgment of conviction stays the execution of the judgment, upon filing with the Clerk of the Court in which the conviction was had a certificate of the Judge of such Court, or of a Justice of the Supreme Court, that in his opinion there is probable cause for the appeal, but not otherwise.

Effect of an
appeal by
the
defendant.

1244. If the certificate provided for in the preceding section is filed, the Sheriff must, if the defendant be in his custody, upon being served with a copy thereof, keep the defendant in his custody without executing the judgment, and detain him to abide the judgment on appeal.

Same.

Same. 1245. If, before the granting of the certificate, the judgment has commenced, the further execution thereof is suspended, and upon service of a copy of such certificate the defendant must be restored, by the officer in whose custody he is, to his original custody.

Duty of Clerks upon appeal. 1246. (§ 492.) Upon the appeal being taken, the Clerk with whom the notice of appeal is filed must, within ten days thereafter, without charge, transmit to the Clerk of the appellate Court a copy of the notice of appeal and of the record, and of all bills of exception, instructions, and indorsements thereon; and upon the receipt thereof the Clerk of the appellate Court must file the same and perform the same service as in civil cases, without charge.

CHAPTER II.

DISMISSING AN APPEAL FOR IRREGULARITY.

SECTION 1248. For what irregularity, and how dismissed.

1249. Dismissal for want of a return.

For what irregularity, and how dismissed. 1248. (§ 493.) If the appeal is irregular in any substantial particular, but not otherwise, the appellate Court may, on any day in term, on motion of the respondent, upon five days notice, accompanied with copies of the papers upon which the motion is founded, order it to be dismissed.

Dismissed for want of a return. 1249. (§ 494.) The Court may also, upon like motion, dismiss the appeal, if the return is not made as provided in Section 1246, unless for good cause they enlarge the time for that purpose.

CHAPTER III.

ARGUMENT OF THE APPEAL.

SECTION 1252. Appeals, when to be heard and determined.

1253. Judgment may be affirmed, but cannot be reversed without argument.

1254. Number of counsel to be heard.

1255. Defendant need not be present.

1252. (§ 495.) All appeals in criminal cases must be heard and determined at the first term of the appellate Court after the record is filed.

Appeals,
when to be
heard and
determined

1253. (§ 496.) The judgment may be affirmed if the appellant fail to appear, but can be reversed only after argument, though the respondent fail to appear.

Judgment
may be
affirmed,
but cannot
be reversed
without
argument.

1254. (§ 497.) Upon the argument of the appeal, if the offense is punishable with death, two counsel must be heard on each side, if they require it. In any other case the Court may, in its discretion, restrict the argument to one counsel on each side.

Number of
counsel to
be heard.

1255. (§ 498.) The defendant need not personally appear in the appellate Court.

Defendant
need not be
present.

CHAPTER IV.

JUDGMENT UPON APPEAL.

SECTION 1258. Court to give judgment without regard to technical errors.

1259. What may be reviewed on an appeal by defendant from a judgment.

1260. May reverse, affirm, or modify the judgment, and order new trial.

1261. New trial, where to be had.

1262. Defendant, when to be discharged on reversal of judgment.

1263. Judgment to be executed on affirmance.

SECTION 1264. Judgment of appellate Court, how entered and remitted.

1265. Jurisdiction of appellate Court ceases after judgment remitted.

Court to give judgment without regard to technical errors.

1258. (§ 499.) After hearing the appeal, the Court must give judgment without regard to technical errors or defects, or to exceptions, which do not affect the substantial rights of the parties.

What may be reviewed on an appeal by defendant from a judgment.

1259. (§ 484.) Upon an appeal taken by the defendant from a judgment, the Court may review any intermediate order or ruling involving the merits, or which may have affected the judgment.

May reverse, affirm, or modify the judgment, and order new trial.

1260. (§ 500.) The Court may reverse, affirm, or modify the judgment or order appealed from, and may set aside, affirm, or modify any or all of the proceedings subsequent to, or dependant upon, such judgment or order, and may, if proper, order a new trial.

New trial, where to be had.

1261. (§ 501.) When a new trial is ordered it must be directed to be had in the Court of the county from which the appeal was taken.

Defendant, when to be discharged on reversal of judgment.

1262. (§ 502.) If a judgment against the defendant is reversed without ordering a new trial, the appellate Court must, if he is in custody, direct him to be discharged therefrom; or if on bail, that his bail be exonerated; or if money was deposited instead of bail, that it be refunded to the defendant.

Judgment to be executed on affirmance.

1263. (§ 503.) If a judgment against the defendant is affirmed, the original judgment must be enforced.

Judgment of appellate Court, how entered and remitted.

1264. (§ 504.) When the judgment of the appellate Court is given, it must be entered in the minutes, and a certified copy of the entry forthwith remitted to the Clerk of the Court from which the appeal was taken.

1265. (§ 506.) After the certificate of the judgment has been remitted to the Court below, the appellate Court has no further jurisdiction of the appeal or of the proceedings thereon, and all orders necessary to carry the judgment into effect must be made by the Court to which the certificate is remitted.

Jurisdiction of appellate Court ceases after judgment remitted.

TITLE X.

MISCELLANEOUS PROCEEDINGS.

CHAPTER I. *Bail.*

- II. *Who may be witnesses in criminal actions.*
- III. *Compelling the attendance of witnesses.*
- IV. *Examination of witnesses conditionally.*
- V. *Examination of witnesses on commission.*
- VI. *Inquiry into the insanity of the defendant before trial or after conviction.*
- VII. *Compromising certain public offenses by leave of the Court.*
- VIII. *Dismissal of the action, before or after indictment, for want of prosecution or otherwise.*
- IX. *Proceedings against corporations.*
- X. *Entitling affidavits.*
- XI. *Errors and mistakes in pleadings and other proceedings.*
- XII. *Disposal of property stolen or embezzled.*
- XIII. *Reprieves, commutations, and pardons.*

CHAPTER I.

BAIL.

ARTICLE I. IN WHAT CASES THE DEFENDANT MAY BE ADMITTED TO BAIL.

II. BAIL UPON BEING HELD TO ANSWER BEFORE INDICTMENT.

III. BAIL UPON AN INDICTMENT BEFORE CONVICTION.

IV. BAIL ON APPEAL.

V. DEPOSIT INSTEAD OF BAIL.

VI. SURRENDER OF THE DEFENDANT.

VII. FORFEITURE OF THE UNDERTAKING OF BAIL OR OF THE DEPOSIT OF MONEY.

VIII. RECOMMITMENT OF THE DEFENDANT AFTER HAVING GIVEN BAIL OR DEPOSITED MONEY INSTEAD OF BAIL.

ARTICLE I.

IN WHAT CASES THE DEFENDANT MAY BE ADMITTED TO BAIL.

SECTION 1268. Admission to bail defined.

1269. Taking of bail defined.

1270. Offense not bailable.

1271. In what cases defendant may be admitted to bail before conviction.

1272. In what cases he may be admitted to bail after conviction and upon appeal.

1273. Nature of bail.

1274. When bail is matter of discretion, notice of application must be given to District Attorney.

Admission
to bail
defined.

1268. (§ 507.) Admission to bail is the order of a competent Court or magistrate that the defendant be discharged from actual custody upon bail.

Taking of
bail defined

1269. (§ 508.) The taking of bail consists in the acceptance, by a competent Court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant, according to the terms of the undertaking, or that the bail will pay to the people of this State a specified sum.

1270. (§ 510.) A defendant charged with an offense punishable with death cannot be admitted to bail, when the proof of his guilt is evident or the presumption thereof great. The finding of an indictment does not add to the strength of the proof or the presumptions to be drawn therefrom.

Offense not
bailable.

1271. (§ 509.) If the charge is for any other offense, he may be admitted to bail before conviction, as a matter of right.

In what
cases
defendant
may be
admitted to
bail before
conviction.

1272. (§ 512.) After conviction of an offense not punishable with death, a defendant who has appealed may be admitted to bail:

In what
cases he
may be
admitted to
bail after
conviction
and upon
appeal.

1. As a matter of right, when the appeal is from a judgment imposing a fine only;

2. As a matter of discretion in all other cases.

1273. (§§ 513, 514.) If the offense is bailable, the defendant may be admitted to bail before conviction:

Nature of
bail.

1. For his appearance before the magistrate on the examination of the charge, before being held to answer;

2. To appear at the Court to which the magistrate is required to return the depositions and statement, upon the defendant being held to answer after examination;

3. After indictment, either before the bench warrant is issued for his arrest or upon any order of the Court committing him or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the Court in which it is found, or to which it may be transferred for trial.

And after conviction, and upon an appeal:

1. If the appeal is from a judgment imposing a fine only, on the undertaking of bail, that he will pay the same, or such part of it as the appellate Court may direct, if the judgment is affirmed or modified, or the appeal is dismissed;

2. If judgment of imprisonment has been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed.

When bail is matter of discretion, notice of application must be given to District Attorney.

1274. (§ 511.) When the admission to bail is a matter of discretion, the Court or officer to whom the application is made must require reasonable notice thereof to be given to the District Attorney of the county.

ARTICLE II.

BAIL UPON BEING HELD TO ANSWER BEFORE INDICTMENT.

SECTION 1277. What magistrates may admit to bail.

1278. Bail, how put in and form of the undertaking.

1279. Qualifications of bail.

1280. Bail, how to justify.

1281. On allowance of bail, defendant to be discharged.

What magistrates may admit to bail.

1277. (§ 515.) When the defendant has been held to answer upon an examination for a public offense, the admission to bail may be by the magistrate by whom he is so held, or by any magistrate who has power to issue the writ of habeas corpus.

Bail, how put in and form of the undertaking.

1278. (§ 516.) Bail is put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the magistrate), and acknowledged before the Court or magistrate, in substantially the following form:

An order having been made on the — day of —, A. D. eighteen —, by A. B., a Justice of the Peace of — County (or as the case may be), that C. D. be held to answer upon a charge of (stating briefly the nature of the offense), upon which he has been admitted to bail in the sum of — dollars; we, E. F. and G. H. (stating their place of residence and occupation), hereby undertake that the above named C. D. will appear and answer the charge above mentioned, in whatever Court it may be prosecuted, and will at all times hold himself amenable to the orders and pro-

cess of the Court, and if convicted, will appear for judgment and render himself in execution thereof, or if he fails to perform either of these conditions, that we will pay to the people of the State of California the sum of ——— dollars (inserting the sum in which the defendant is admitted to bail.)

1279. (§ 517.) The qualifications of bail are as follows: Qualifications of bail

1. Each of them must be a resident, householder, or freeholder within the State; but the Court or magistrate may refuse to accept any person as bail who is not a resident of the county where bail is offered;

2. They must each be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the Court or magistrate, on taking bail, may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of sufficient bail.

1280. (§§ 518, 519.) The bail must in all cases justify by affidavit taken before the magistrate, that they each possess the qualifications provided in the preceding section. The magistrate may further examine the bail upon oath concerning their sufficiency, in such manner as he may deem proper. Bail, how to justify.

1281. Upon the allowance of bail and the execution of the undertaking, the magistrate must, if the defendant is in custody, make and sign an order for his discharge, upon the delivery of which to the proper officer the defendant must be discharged. On allowance of bail, defendant to be discharged.

ARTICLE III.

BAIL UPON AN INDICTMENT BEFORE CONVICTION.

SECTION 1284. When offense is not capital.

1285. When the offense is capital.

1286. Bail on habeas corpus.

SECTION 1287. Form of undertaking.

1288. Sections applicable to qualifications, etc.

When
offense is
not capital.

1284. (§ 520.) When the offense charged in the indictment is not punishable with death, the officer serving the bench warrant must, if required, take the defendant before a magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail.

When the
offense is
capital.

1285. (§ 521.) If the offense charged in the indictment is punishable with death, the officer arresting the defendant must deliver him **into custody**, according to the command of the bench warrant.

Bail on
habeas
corpus.

1286. (§ 522.) When the defendant is so delivered into custody he must be held by the Sheriff, unless admitted to bail on examination upon a writ of habeas corpus.

Form of
undertak-
ing.

1287. (§ 523.) The bail must be put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the Court or magistrate), and acknowledged before the Court or magistrate, in substantially the following form:

An indictment having been found on the — day of —, A. D. eighteen —, in the County Court of the County of —, charging A. B. with the crime of — (designating it generally), and he having been admitted to bail in the sum of — dollars, we, C. D. and E. F., of — (stating their place of residence and occupation), hereby undertake that the above named A. B. will appear and answer the indictment above mentioned, in whatever Court it may be prosecuted, and will at all times render himself amenable to the orders and process of the Court, and, if convicted, will appear for judgment and render himself in execution thereof; or, if he fails to perform either of these conditions, that we will pay to the people of the State of California the sum of — dollars (inserting the sum in which the defendant is admitted to bail.)

1288. (§ 524.) The provisions contained in Sections 1279, 1280, and 1281, in relation to bail, apply to the qualifications of the bail, and to all the proceedings respecting the putting in and justifying of bail and incident thereto.

Sections applicable to qualifications, etc.

ARTICLE IV.

BAIL ON APPEAL.

SECTION 1291. Who may admit to bail.

1292. Qualifications of bail and how put in, and condition of undertaking.

1291. (§ 525.) In the cases in which defendant may be admitted to bail upon an appeal, the order admitting him to bail may be made by any magistrate having the power to issue a writ of habeas corpus.

Who may admit to bail.

1292. (§ 527.) The bail must possess the qualifications, and must be put in, in all respects, as provided in Article II of this Chapter, except that the undertaking must be conditioned as prescribed in Section 1273, for undertakings of bail on appeal.

Qualifications of bail and how put in, and condition of undertaking.

ARTICLE V.

DEPOSIT INSTEAD OF BAIL.

SECTION 1295. Deposit, when and how made.

1296. May, after bail is given and before forfeiture.

1297. Deposit to be applied to payment of judgment and fine.

1295. (§ 528.) The defendant, at any time after an order admitting him to bail, instead of giving bail may deposit with the Clerk of the Court in which he is held to answer, the sum mentioned in the order, and upon delivering to the officer in whose custody he is a certificate of the deposit, he must be discharged from custody.

Deposit, when and how made.

May, after
bail is
given and
before
forfeiture.

1296. (§ 529.) If the defendant has given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the recognizance, and upon the deposit being made the bail is exonerated.

Deposit to
be applied
to payment
of judg-
ment and
fine.

1297. (§ 530.) When money has been deposited, if it remains on deposit at the time of a judgment for the payment of a fine, the County Clerk must, under the direction of the Court, apply the money in satisfaction thereof, and after satisfying the fine and costs, must refund the surplus, if any, to the defendant.

ARTICLE VI.

SURRENDER OF THE DEFENDANT.

SECTION 1300. Surrender, by whom; when, and how made.

1301. By whom, etc., the defendant may be arrested for the purpose of a surrender.

1302. On a surrender, before forfeiture, money deposited to be refunded, etc.

Surrender,
by whom;
when, and
how made.

1300. (§§ 531, 532.) At any time before the forfeiture of their undertaking the bail may surrender the defendant in their exoneration, or he may surrender himself, to the officer to whose custody he was committed at the time of giving bail, in the following manner:

1. A certified copy of the undertaking of the bail must be delivered to the officer, who must detain the defendant in his custody thereon as upon a commitment, and by a certificate in writing acknowledge the surrender;

2. Upon the undertaking and the certificate of the officer, the Court in which the action or appeal is pending may, upon notice of five days to the District Attorney of the county, with a copy of the undertaking and certificate, order that the bail be exonerated,

and on filing the order and the papers used on the application, they are exonerated accordingly.

1301. (§ 533.) For the purpose of surrendering the defendant, the bail, at any time before they are finally discharged, and at any place within the State, may themselves arrest him, or by a written authority, indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

By whom, etc., the defendant may be arrested for the purpose of a surrender.

1302. (§ 534.) If money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, surrenders himself to the officer to whom the commitment was directed, in the manner provided in the last two sections, the Court must order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender, and upon a notice of five days to the District Attorney, with a copy of the certificate.

On a surrender, before forfeiture, money deposited to be refunded, etc.

ARTICLE VII.

FORFEITURE OF THE UNDERTAKING OF BAIL OR OF THE DEPOSIT OF MONEY.

SECTION 1305. In what cases, and how ordered. When and how forfeiture may be discharged.

1306. Forfeiture to be enforced by action.

1307. Deposit, when forfeited, how disposed of.

1305. (§§ 535, 536.) If, without sufficient excuse, the defendant neglects to appear for arraignment or for trial or judgment, or upon any other occasion when his presence in Court may be lawfully required, or to surrender himself in execution of the judgment, the Court must direct the fact to be entered upon its minutes, and the undertaking of bail, or the money deposited instead of bail, as the case may be, is thereupon declared forfeited. But if at any time before the final

In what cases, and how ordered.

When and how forfeiture may be discharged.

adjournment of the Court, the defendant or his bail appear and satisfactorily excuse his neglect, the Court may direct the forfeiture of the undertaking or the deposit to be discharged upon such terms as may be just.

Forfeiture to be enforced by action.

1306. (§ 537.) If the forfeiture is not discharged, as provided in the last section, the District Attorney may at any time after the adjournment of the Court proceed by action only against the bail upon their undertaking.

Deposit, when forfeited, how disposed of.

1307. (§ 538.) If, by reason of the neglect of the defendant to appear, money deposited instead of bail is forfeited, and the forfeiture is not discharged or remitted, the Clerk with whom it is deposited must, immediately after the final adjournment of the Court, pay over the money deposited to the County Treasurer.

ARTICLE VIII.

RECOMMITMENT OF THE DEFENDANT, AFTER HAVING GIVEN BAIL OR DEPOSITED MONEY INSTEAD OF BAIL.

SECTION 1310. In what cases.

- 1311. Contents of order.
- 1312. Defendant may be arrested in any county.
- 1313. If for failure to appear for judgment, defendant must be committed.
- 1314. If for other cause, he may be admitted to bail.
- 1315. Bail in such case, by whom taken.
- 1316. Form of the undertaking.
- 1317. Bail must possess what qualifications, and how put in.

In what cases.

1310. (§ 539.) The Court to which the committing magistrate returns the depositions, or in which an indictment or appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order entered upon its minutes, direct the arrest of the defendant and his commitment to the officer to whose custody he was committed at the time

of giving bail, and his detention until legally discharged, in the following cases: Same.

1. When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof;

2. When it satisfactorily appears to the Court that his bail, or either of them, are dead or insufficient, or have removed from the State;

3. Upon an indictment being found in the cases provided in Section 985.

1311. (§ 540.) The order for the recommitment of the defendant must recite generally the facts upon which it is founded, and direct that the defendant be arrested by any Sheriff, Constable, Marshal, or Policeman in this State, and committed to the officer in whose custody he was at the time he was admitted to bail, to be detained until legally discharged. Contents of order.

1312. (§ 541.) The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest, except that when arrested in another county the order need not be indorsed by a magistrate of that county. Defendant may be arrested in any county.

1313. (§ 542.) • If the order recites, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order. If for failure to appear for judgment, defendant must be committed.

1314. (§ 543.) If the order be made for any other cause, and the offense is bailable, the Court may fix the amount of bail, and may cause a direction to be inserted in the order that the defendant be admitted to bail in the sum fixed, which must be specified in the order. If for other cause, he may be admitted to bail.

Bail in such
case, by
whom
taken.

1315. (§ 544.) When the defendant is admitted to bail, the bail may be taken by any magistrate in the county, having authority in a similar case to admit to bail, upon the holding of the defendant to answer before an indictment, or by any other magistrate designated by the Court.

Form of
the under-
taking.

1316. (§ 545.) When bail is taken upon the recommitment of the defendant, the undertaking must be in substantially the following form:

An order having been made on the — day of —, A. D. eighteen —, by the Court (naming it), that A. B. be admitted to bail in the sum of — dollars, in an action pending in that Court against him in behalf of the people of the State of California, upon an (information, presentment, indictment, or appeal, as the case may be), we, C. D. and E. F., of (stating their places of residence and occupation), hereby undertake that the above named A. B. will appear in that or any other Court in which his appearance may be lawfully required upon that (information, presentment, indictment, or appeal, as the case may be), and will at all times render himself amenable to its orders and process, and appear for judgment and surrender himself in execution thereof; or if he fails to perform either of these conditions, that we will pay to the people of the State of California the sum of — dollars (insert the sum in which the defendant is admitted to bail).

Bail must
possess
what quali-
fications,
and how
put in.

1317. (§ 546.) The bail must possess the qualifications, and must be put in, in all respects, in the manner prescribed in Article II of this Chapter.

CHAPTER II.

WHO MAY BE WITNESSES IN CRIMINAL ACTIONS.

SECTION 1321. Who are competent witnesses.

1322. When husband and wife are not competent witnesses.

1323. When the defendant is not a competent witness.

1321. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this Code. Who are competent witnesses.

1322. Except with the consent of both, or in cases of criminal violence upon one by the other, neither husband nor wife are competent witnesses for or against each other in a criminal action or proceeding to which one or both are parties. When husband and wife are not competent witnesses.

1323. A defendant in a criminal action or proceeding to which he is a party, is not, without his consent, a competent witness for or against himself. His neglect or refusal to give such consent shall not in any manner prejudice him nor be used against him on the trial or proceeding. When the defendant is not a competent witness.

CHAPTER III.

COMPELLING THE ATTENDANCE OF WITNESSES.

SECTION 1326. Subpoena defined, and who may issue.

1327. Form of subpoena.

1328. Subpoena, by whom and how served.

1329. Payment of the expenses of the witness when he is from without the county or is poor.

1330. Witness residing or served with subpoena out of the county, how compelled to attend.

1331. Disobedience to subpoena, etc.

1332. Failure to appear, undertaking forfeited.

1326. (§§ 547, 548, 549, 550, 551.) The process by which the attendance of a witness before a Court or magistrate is required is a subpoena; it may be signed and issued by: Subpoena defined, and who may issue.

1. A magistrate before whom an information is laid, for witnesses in the State, either on behalf of the people or of the defendant;

Same.

2. The District Attorney, for witnesses in the State, in support of the prosecution, or for such other witnesses as the Grand Jury, upon an investigation pending before them, may direct;

3. The District Attorney, for witnesses in the State, in support of an indictment, to appear before the Court in which it is to be tried;

4. The Clerk of the Court in which an indictment is to be tried; and he must, at any time, upon application of the defendant, and without charge, issue as many blank subpoenas, subscribed by him as Clerk, for witnesses in the State, as the defendant may require.

1327. (§§ 552, 553.) A subpoena authorized by the last section must be substantially in the following form:

Form of subpoena.

The People of the State of California to A. B.:

You are commanded to appear before C. D., a Justice of the Peace of — Township, in — County (or as the case may be), at (naming the place), on (stating the day and hour), as a witness in a criminal action prosecuted by the people of the State of California against E. F.

Given under my hand this — day of —, A. D. eighteen —. G. H., Justice of the Peace, (or "J. K., District Attorney," or "By order of the Court, L. M., Clerk," or as the case may be). If books, papers, or documents are required, a direction to the following effect must be contained in the subpoena: "And you are required, also, to bring with you the following" (describing intelligibly the books, papers, or documents required).

Subpoena, by whom and how served.

1328. (§§ 554, 555.) A subpoena may be served by any person, but a peace officer must serve in his county any subpoena delivered to him for service, either on the part of the people or of the defendant, and must, without delay, make a written return of the service, subscribed by him, stating the time and place of service. The service is made by showing the

original to the witness personally and informing him of its contents.

1329. (§§ 556, 557.) When a person attends before a magistrate, Grand Jury, or Court, as a witness on behalf of the people, upon a subpoena or pursuant to an undertaking, and it appears that he has come from a place out of the county, or that he is poor, the Court, if the attendance of the witness be upon a trial, by an order upon its minutes, or, in any other case, the County Judge, by a written order, may direct the County Treasurer to pay the witness a reasonable sum, to be specified in the order, for his expenses. Upon the production of the order, or a certified copy thereof, the County Treasurer must pay the witness the sum specified therein, out of the County Treasury.

Payment of the expenses of the witness when he is from without the county or is poor.

1330. (§ 558.) No person is obliged to attend as a witness before a Court or magistrate out of the county where the witness resides or is served with the subpoena, unless the Judge of the Court in which the offense is triable, or a Justice of the Supreme Court, or a County Judge, upon an affidavit of the District Attorney or prosecutor, or of the defendant or his counsel, stating that he believes the evidence of the witness is material, and his attendance at the examination or trial necessary, shall indorse on the subpoena an order for the attendance of the witness.

Witness residing or served with subpoena out of the county, how compelled to attend.

1331. (§§ 559, 561.) Disobedience to a subpoena, or a refusal to be sworn or to testify as a witness, may be punished by the Court or magistrate as a contempt. A witness disobeying a subpoena issued on the part of the defendant, unless he show good cause for his non-attendance, is liable to the defendant in the sum of one hundred dollars, which may be recovered in a civil action.

Disobedience to subpoena, etc.

Failure to
appear, un-
dertaking
forfeited.

1332. (§ 560.) When a witness has entered into an undertaking to appear, upon his failure to do so the undertaking is forfeited in the same manner as undertakings of bail.

CHAPTER IV.

EXAMINATION OF WITNESSES CONDITIONALLY.

SECTION 1335. Witnesses to be examined conditionally for the defendant, as provided in this Chapter.

1336. In what cases defendant may apply for the order.

1337. Application, how made.

1338. Application, to whom made.

1339. Order, when granted and what to contain.

1340. On proof of service, if District Attorney be absent, examination must proceed.

1341. If facts on which order was founded be disproved, examination not to proceed.

1342. Attendance of witness, how enforced.

1343. Testimony, how taken and authenticated.

1344. Deposition to be transmitted to Clerk.

1345. When may be read in evidence. Subject to objections, etc.

Witnesses
to be
examined
condition-
ally for the
defendant,
as provided
in this
Chapter.

1335. (§ 562.) When a defendant has been held to answer a charge for a public offense, he may, either before or after an indictment, have witnesses examined conditionally, on his behalf, as prescribed in this Chapter, and not otherwise.

In what
cases
defendant
may apply
for the
order.

1336. (§ 563.) When a material witness for the defendant is about to leave the State, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally.

Applica-
tion, how
made.

1337. (§ 566.) The application must be made upon affidavit, stating:

1. The nature of the offense charged;

2. The state of the proceedings in the action;
3. The name and residence of the witness, and that his testimony is material to the defense of the action;
4. That the witness is about to leave the State, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

1338. (§ 567.) The application may be made to the Court during the term thereof, or to the Judge in vacation, and must be upon three days notice to the District Attorney.

Applica-
tion, to
whom
made.

1339. (§§ 568, 569.) If the Court or Judge is satisfied that the examination of the witness is necessary, an order must be made that the witness be examined conditionally, at a specified time and place, and that a copy of the order be served on the District Attorney, within a specified time before that fixed for the examination.

Order,
when
granted
and what
to contain.

1340. The order must direct that the examination be taken before a magistrate named therein, and on proof being furnished to such magistrate of service upon the District Attorney of a copy of the order, if no counsel appear on the part of the people, the examination must proceed.

On proof
of service,
if District
Attorney
be absent,
examina-
tion must
proceed.

1341. If the District Attorney or other counsel appear on behalf of the people, and it is shown to the satisfaction of the magistrate, by affidavit or other proof, or on the examination of the witness, that he is not about to leave the State, or is not sick or infirm, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place; otherwise it must proceed.

If facts on
which
order was
founded be
disproved,
examina-
tion not to
proceed.

Attendance
of witness,
how
enforced.

1342. The attendance of the witness may be enforced by a subpoena, issued by the magistrate before whom the examination is to be taken.

Testimony,
how taken
and au-
thenticated

1343. The testimony given by the witness must be reduced to writing, and authenticated in the same manner as the testimony of a witness taken in support of an information.

Deposition
to be trans-
mitted to
Clerk.

1344. The deposition taken must, by the magistrate, be sealed up and transmitted to the Clerk of the Court in which the action is pending or may come for trial.

When may
be read in
evidence.

1345. (§ 582.) The deposition, or a certified copy thereof, may be read in evidence by either party on the trial, upon its appearing that the witness is unable to attend, by reason of his death, insanity, sickness, or infirmity, or of his continued absence from the State. Upon reading the deposition in evidence, the same objections may be taken to a question or answer contained therein as if the witness had been examined orally in Court.

Subject to
objections,
etc.

CHAPTER V.

EXAMINATION OF WITNESSES ON COMMISSION.

SECTION 1349. Witness residing out of the State, when to be examined.

1350. When defendant may apply for an order to examine, etc.

1351. Commission defined.

1352. Application made on affidavit.

1353. Application, to whom made.

1354. Order for commission, when granted, and stay of proceedings.

1355. Interrogations, how settled and allowed.

1356. Direction as to the return of the commission.

1357. Commission, how executed. Copy of this section to be annexed to commission.

SECTION 1358. Commission, how returned, when delivered to an agent for that purpose.

1359. Same.

1360. When and how filed.

1361. Commission and return to be open for inspection. Copies, etc.

1362. Depositions to be read in evidence. Objections thereto, etc.

1349. When an issue of fact is joined upon an indictment, the defendant may have any material witness, residing out of the State, examined in his behalf, as prescribed in this Chapter, and not otherwise.

Witness residing out of the State, when to be examined.

1350. When a material witness for the defendant resides out of the State, the defendant may apply for an order that the witness be examined on a commission.

When defendant may apply for an order to examine, etc.

1351. (§ 564.) A commission is a process issued under the seal of the Court and the signature of the Clerk, directed to some person designated as Commissioner, authorizing him to examine the witness upon oath on interrogatories annexed thereto, to take and certify the deposition of the witness, and to return it according to the directions given with the commission.

Commission defined

1352. (§ 566.) The application must be made upon affidavit, stating:

Application made on affidavit

1. The nature of the offense charged;
2. The state of the proceedings in the action, and that an issue of fact has been joined therein;
3. The name of the witness, and that his testimony is material to the defense of the action;
4. That the witness resides out of the State.

1353. (§ 567.) The application may be made to the Court during the term, or to the Judge in vacation, and must be upon three days' notice to the District Attorney.

Application, to whom made.

Order for
commis-
sion, when
granted,
and stay of
proceed-
ings.

1354. (§§ 568, 569.) If the Court or Judge to whom the application is made is satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order must be made that a commission be issued to take his testimony; and the Court or Judge may insert in the order a direction that the trial of the indictment be stayed for a specified time, reasonably sufficient for the execution and return of the commission.

Interroga-
tions, how
settled and
allowed.

1355. (§§ 570, 571, 572, 573.) When the commission is ordered, the defendant must serve upon the District Attorney, without delay, a copy of the interrogatories to be annexed thereto, with two days' notice of the time at which they will be presented to the Court or Judge. The District Attorney may in like manner serve upon the defendant or his counsel cross-interrogatories, to be annexed to the commission, with the like notice. In the interrogatories either party may insert any questions pertinent to the issue. When the interrogatories and cross-interrogatories are presented to the Court or Judge, according to the notice given, the Court or Judge must modify the questions so as to conform them to the rules of evidence, and must indorse upon them his allowance and annex them to the commission.

Direction
as to the
return of
the com-
mission.

1356. (§ 574.) Unless the parties otherwise consent, by an indorsement upon the commission, the Court or Judge must indorse thereon a direction as to the manner in which it must be returned, and may, in his discretion, direct that it be returned by mail or otherwise, addressed to the Clerk of the Court in which the action is pending, designating his name and the place where his office is kept.

Commis-
sion, how
executed.

1357. (§§ 575, 576.) The Commissioner, unless otherwise specially directed, may execute the commission as follows:

1. He must publicly administer an oath to the witness, that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth; Same.

2. He must cause the examination of the witness to be reduced to writing;

3. He must write the answers of the witness as near as possible in the language in which he gives them, and read to him each answer as it is taken down, and correct or add to it until it conforms to what he declares is the truth;

4. If the witness declines answering a question, that fact, with the reason assigned by him for declining, must be stated;

5. If any papers or documents are produced before him and proved by the witness, they must be annexed to the deposition subscribed by the witness and certified by the Commissioner;

6. The Commissioner must subscribe his name to each sheet of the deposition, and annex the deposition, with the papers and documents proved by the witness, to the commission, and must close it up under seal, and address it as directed by the indorsement thereon;

7. If there is a direction on the commission to return it by mail, the Commissioner must immediately deposit it in the nearest Post Office. If any other direction is made by the written consent of the parties, or by the Court or Judge, on the commission, as to its return, he must comply with the direction.

A copy of this section must be annexed to the commission.

Copy of this section to be annexed to commission.

1358. (§ 577.) If the commission and return is delivered by the Commissioner to an agent, he must deliver the same to the Clerk to whom it is directed, or to the Judge of the Court in which the indictment is pending, by whom it may be received and opened, upon the agent making affidavit that he received it

Commission, how returned, when delivered to an agent for that purpose.

from the hands of the Commissioner, and that it has not been opened or altered since he received it.

Same. 1359. (§ 578.) If the agent is dead, or from sickness or other casualty unable personally to deliver the commission and return, as prescribed in the last section, it may be received by the Clerk or Judge from any other person, upon his making an affidavit that he received it from the agent; that the agent is dead, or from sickness or other casualty unable to deliver it; that it has not been opened or altered since the person making the affidavit received it; and that he believes it has not been opened or altered since it came from the hands of the Commissioner.

When and how filed. 1360. (§§ 579, 580.) The Clerk or Judge receiving and opening the commission and return must immediately file it, with the affidavit mentioned in the last two sections, in the office of the Clerk of the Court in which the indictment is pending. If the commission and return is transmitted by mail, the Clerk to whom it is addressed must receive it from the Post Office, and open and file it in his office, where it must remain, unless otherwise directed by the Court or Judge.

Commission and return to be open for inspection. Copies, etc. 1361. (§ 581.) The commission and return must at all times be open to the inspection of the parties, who must be furnished by the Clerk with copies of the same or of any part thereof, on payment of his fees.

Depositions to be read in evidence 1362. (§ 582.) The depositions taken under the commission may be read in evidence by either party on the trial, upon it being shown that the witness is unable to attend from any cause whatever; and the same objections may be taken to a question in the interrogatories or to an answer in the deposition, as if the witness had been examined orally in Court.

Objections thereto.

CHAPTER VI.

INQUIRY INTO THE INSANITY OF THE DEFENDANT BEFORE TRIAL OR AFTER CONVICTION.

SECTION 1367. An insane person cannot be tried, sentenced, or punished for a public offense.

1368. When doubts arise as to sanity of the defendant, how determined. Stay of proceedings on.

1369. Order of the trial of the question of insanity. Charge of the Court.

1370. Verdict of the jury and proceedings thereon.

1371. If defendant is committed, it exonerates his bail, etc.

1372. Defendant detained in asylum until he becomes sane. Notice then given to District Attorney, etc.

1373. Expense of sending, etc., defendant to asylum, where chargeable.

1367. (§ 583.) A person cannot be tried, adjudged to punishment, or punished for a public offense, while he is insane.

An insane person cannot be tried, sentenced, or punished for a public offense.

1368. (§§ 584, 585.) When an indictment is called for trial, if a doubt arises as to the sanity of the defendant, the Court must order the question to be submitted to a jury; where such doubt arises on the defendant being brought up for judgment on conviction, the Court must order a jury to be summoned from the list of jurors selected by the Supervisors for the year, to inquire into the fact; and the trial of the indictment or the pronouncing of the judgment must be suspended until the question of insanity is determined by the verdict of the jury.

When doubts arise as to sanity of the defendant, how determined

Stay of proceedings on.

1369. (§§ 586, 587.) The trial of the question of insanity must proceed in the following order:

Order of the trial of the question of insanity.

1. The counsel for the defendant must open the case and offer evidence in support of the allegation of insanity;

2. The counsel for the people may then open their case and offer evidence in support thereof;

3. The parties may then respectively offer rebutting

Same. testimony only, unless the Court, for good reason in furtherance of justice, permit them to offer evidence upon their original cause;

4. When the evidence is concluded, unless the case is submitted to the jury on either or both sides without argument, the counsel for the people must commence, and the defendant or his counsel may conclude the argument to the jury;

5. If the indictment be for an offense punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. In other cases the argument may be restricted to one counsel on each side;

Charge of the Court.

6. The Court must then charge the jury, stating to them all matters of law necessary for their information in giving their verdict.

Verdict of the jury and proceedings thereon.

1370. (§§ 588, 589.) If the jury find the defendant sane, the trial of the indictment must proceed, or judgment may be pronounced, as the case may be. If the jury find the defendant insane, the trial or judgment must be suspended until he becomes sane, and the Court, if it deems his discharge dangerous to the public peace or safety, may order that he be in the meantime committed by the Sheriff to the State Lunatic Asylum, and that upon his becoming sane he be redelivered to the Sheriff.

If defendant is committed, it exonerates his bail, etc.

1371. (§ 590.) The commitment of the defendant, as mentioned in the last section, exonerates his bail, or entitles a person, authorized to receive the property of the defendant, to a return of any money he may have deposited instead of bail.

Defendant detained in asylum until he becomes sane. Notice then given to District Attorney, etc.

1372. (§ 591.) If the defendant is received into the Asylum, he must be detained there until he becomes sane. When he becomes sane, the Superintendent must give notice of that fact to the Sheriff and District Attorney of the county. The Sheriff

must thereupon, without delay, bring the defendant from the Asylum, and place him in proper custody until he is brought to trial or judgment, as the case may be, or is legally discharged.

1373. (§ 592.) The expenses of sending the defendant to the Asylum, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found; but the county may recover them from the estate of the defendant, if he have any, or from a relative, town, city, or county bound to provide for and maintain him elsewhere.

Expense of
sending,
etc.,
defendant
to asylum,
where
chargeable.

CHAPTER VII.

COMPROMISING CERTAIN PUBLIC OFFENSES BY LEAVE OF THE COURT.

SECTION 1377. Certain offenses for which the party injured has a civil action may be compromised.

1378. Compromise to be by permission of the Court. Order thereon to bar another prosecution.

1379. No public offense to be compromised except as herein provided.

1377. (§ 675.) When a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it is committed:

Certain
offenses for
which the
party
injured has
a civil
action may
be compro-
mised.

1. By or upon an officer of justice, while in the execution of the duties of his office;

2. Riotously;

3. With an intent to commit a felony.

1378. (§§ 676, 677.) If the party injured appears before the Court to which the depositions are required to be returned, at any time before trial, and acknowl-

Compro-
mise to be
by
permission
of the
Court.

edges that he has received satisfaction for the injury, the Court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein, and entered on the minutes. The order is a bar to another prosecution for the same offense.

Order
thereon to
bar another
prosecution

No public
offense
to be com-
promised
except as
herein
provided.

1379. (§ 678.) No public offense can be compromised, nor can any proceeding or prosecution for the punishment thereof upon a compromise be stayed, except as provided in this Chapter.

CHAPTER VIII.

DISMISSAL OF THE ACTION BEFORE OR AFTER INDICTMENT, FOR WANT OF PROSECUTION OR OTHERWISE.

SECTION 1382. When action may be dismissed.

1383. Court may order action to be continued and discharge defendant from custody, when and how.

1384. If action dismissed, defendant to be discharged, etc.

1385. Court may, of own motion or on application of District Attorney, order action dismissed.

1386. Nolle prosequi abolished.

1387. Dismissal a bar in misdemeanor, but not in felony.

When
action may
be
dismissed.

1382. (§§ 593, 594.) The Court, unless good cause to the contrary is shown, must order the prosecution or indictment to be dismissed, in the following cases:

1. When a person has been held to answer for a public offense, if an indictment is not found against him at the next term of the Court at which he is held to answer;

2. If a defendant, whose trial has not been postponed upon his application, is not brought to trial at the next term of the Court in which the indictment is triable, after it is found.

1383. (§ 595.) If the defendant is not indicted or tried, as provided in the last section, and sufficient reason therefor is shown, the Court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody on his own undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

Court may order action to be continued and discharge defendant from custody, when and how.

1384. (§ 596.) If the Court directs the action to be dismissed, the defendant must, if in custody, be discharged therefrom; or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him.

If action dismissed, defendant to be discharged, etc.

1385. (§ 597.) The Court may, either of its own motion or upon the application of the District Attorney, and in furtherance of justice, order an action or indictment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes.

Court may, of own motion or on application of District Attorney, order action dismissed.

1386. (§ 598.) The entry of a nolle prosequi is abolished, and neither the Attorney General nor the District Attorney can discontinue or abandon a prosecution for a public offense, except as provided in the last section.

Nolle prosequi abolished.

1387. (§ 599.) An order for the dismissal of the action, as provided in this Chapter, is a bar to any other prosecution for the same offense, if it is a misdemeanor; but it is not a bar if the offense is a felony.

Dismissal a bar in misdemeanor, but not in felony.

CHAPTER IX.

PROCEEDINGS AGAINST CORPORATIONS.

SECTION 1390. Summons upon information, etc., against; by whom issued and when returnable.

1391. Form of summons.

1392. When and how served.

1393. Examination of the charge.

1394. Certificate of the magistrate, and return thereof with the depositions.

1395. If the magistrate certify that there is sufficient cause, Grand Jury to investigate, etc.

1396. Appearance and plea.

1397. Fine on conviction, how collected.

Summons
upon
informa-
tion, etc.,
against; by
whom
issued and
when
returnable

1390. Upon an information or presentment against a corporation, the magistrate must issue a summons, signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge, the time to be not less than ten days after the issuing of the summons.

Form of
summons.

1391. The summons must be substantially in the following form:

COUNTY OF (as the case may be).

The People of the State of California to the (naming the corporation):

You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer a charge made against you upon the information of A. B. (or the presentment of the Grand Jury of the county, as the case may be), for (designating the offense generally).

Dated at the City (or Township) of —, this — day of —, eighteen —.

G. H., Justice of the Peace (or as the case may be).

When and
how served

1392. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the President or other head of the corporation, or to the Secretary, Cashier, or managing agent thereof.

1393. At the appointed time in the summons, the magistrate must proceed to investigate the charge in the same manner as in the case of a natural person, so far as these proceedings are applicable.

Examination of the charge.

1394. After hearing the proofs, the magistrate must certify upon the depositions, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the deposition and certificate, as prescribed in Section 883.

Certificate of the magistrate, and return thereof with the depositions.

1395. If the magistrate returns a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the Grand Jury may proceed thereon as in case of a natural person held to answer.

If the magistrate certify that there is sufficient cause, Grand Jury to investigate, etc.

1396. If an indictment is found, the corporation may appear by counsel to answer the same. If it does not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases.

Appearance and plea.

1397. When a fine is imposed upon a corporation on conviction, it may be collected by virtue of the order imposing it, by the Sheriff of the county, out of its real and personal property, in the same manner as upon an execution in a civil action.

Fine on conviction, how collected.

CHAPTER X.

ENTITLING AFFIDAVITS.

SECTION 1401. Affidavits defectively entitled, valid.

1401. (§ 600.) It is not necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment, or upon an appeal; but if made without a title, or with an erroneous title, it is

Affidavits defectively entitled, valid.

as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceeding, indictment, or appeal in which it is made.

CHAPTER XI

ERRORS AND MISTAKES IN PLEADINGS AND OTHER PROCEEDINGS.

SECTION 1404. When not material.

When not
material.

1404. (§ 601.) Neither a departure from the form or mode prescribed by this Code in respect to any pleading or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant, or tended to his prejudice, in respect to a substantial right.

CHAPTER XII

DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

SECTION 1407. When it comes into the custody of the peace officer he must hold it subject to the order of the magistrate.

1408. Order for its delivery to owner.

1409. When it comes into the custody of the magistrate he must deliver it to owner.

1410. Court in which trial is had may order its delivery.

1411. If not claimed in six months to be delivered to County Treasurer.

1412. Receipt by officers for money, etc., taken from a person arrested for a public offense.

1413. Duties of persons having charge of police offices in incorporated cities or towns.

When it
comes into
the custody
of the peace
officer, he
must hold
it subject
to the order
of the
magistrate

1407. (§ 602.) When property, alleged to have been stolen or embezzled, comes into the custody of a peace officer, he must hold it subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

1408. (§ 603.) On satisfactory proof of the ownership of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling it, must order it to be delivered to the owner, on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

Order for its delivery to owner.

1409. (§ 604.) If property stolen or embezzled comes into custody of the magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

When it comes into the custody of the magistrate he must deliver it to owner.

1410. (§ 605.) If the property stolen or embezzled has not been delivered to the owner, the Court before which a trial is had for stealing or embezzling it may, on proof of his title, order it to be restored to the owner.

Court in which trial is had may order its delivery.

1411. (§ 606.) If the property stolen or embezzled is not claimed by the owner before the expiration of six months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in custody must, on the payment of the necessary expenses incurred in its preservation, deliver it to the County Treasurer, by whom it must be sold and the proceeds paid into the County Treasury.

If not claimed in six months to be delivered to County Treasurer.

1412. (§ 607.) When money or other property is taken from a defendant, arrested upon a charge of a public offense, the officer taking it must at the time give duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken; one of which receipts he must deliver to the defendant and the other of which he must forthwith file with the Clerk of the Court to which the depositions and statement are to be sent. When such prop-

Receipt by officers for money, etc., taken from a person arrested for a public offense.

erty is taken by a police officer of any incorporated city or town, he must deliver one of the receipts to the defendant, and one, with the property, at once to the Clerk or other person in charge of the police office in such city or town.

Duties of persons having charge of police offices in incorporated cities or towns.

1413. The Clerk in, or person having charge of, the Police Office in any incorporated city or town, must enter in a suitable book a description of every article of property alleged to be stolen or embezzled, and brought into the office or taken from the person of a prisoner, and must attach a number to each article, and make a corresponding entry thereof.

CHAPTER XIII.

REPRIEVES, COMMUTATIONS, AND PARDONS.

SECTION 1417. Power of the Governor to grant reprieves, commutations, and pardons.

1418. His power in respect to convictions for treason. Duty of the Legislature in such cases.

1419. Governor to communicate to the Legislature reprieves, commutations, and pardons.

1420. Report of case, how and from whom required.

1421. Notice to District Attorney of application for pardon.

1422. Publication of notice.

1423. When two preceding sections are not applicable.

Power of the Governor to grant reprieves, commutations, and pardons.

1417. The Governor has power to grant reprieves, commutations, and pardons, after conviction, for all offenses, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to the regulations provided in this Chapter.

His power in respect to convictions for treason.

1418. He may suspend the execution of the sentence upon a conviction for treason, until the case can be reported to the Legislature, at its next meeting, when the Legislature may either pardon or commute

the sentence, direct the execution thereof, or grant a further reprieve.

Duty of the Legislature in such cases.

1419. He must communicate to the Legislature each case of reprieve, commutation, or pardon, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon, or reprieve.

Governor to communicate to the Legislature reprieves, commutations and pardons.

1420. When an application is made to the Governor for a pardon, he may require the Judge of the Court before which the conviction was had, or the District Attorney by whom the action was prosecuted, to furnish him, without delay, with a statement of the facts proved on the trial, and of any other facts having reference to the propriety of granting or refusing the pardon.

Report of case, how and from whom required.

1421. At least ten days before the Governor acts upon an application for a pardon, written notice of the intention to apply therefor, signed by the person applying, must be served upon the District Attorney of the county where the conviction was had, and proof, by affidavit, of the service must be presented to the Governor.

Notice to District Attorney of application for pardon.

1422. Unless dispensed with by the Governor, a copy of the notice must also be published for thirty days from the first publication, in a paper in the county in which the conviction was had.

Publication of notice.

1423. The provisions of the two preceding sections are not applicable:

When two preceding sections are not applicable.

1. When there is imminent danger of the death of the person convicted or imprisoned;
2. When the term of imprisonment of the applicant is within ten days of its expiration.

TITLE XI.

OF PROCEEDINGS IN JUSTICES' AND POLICE COURTS
AND APPEALS TO THE COUNTY COURT.CHAPTER I. *Proceedings in Justices' and Police Courts.*II. *Appeals to County Courts.*

CHAPTER I.

PROCEEDINGS IN JUSTICES' AND POLICE COURTS.

- SECTION 1426. Proceedings must be commenced by complaint.
1427. When warrant of arrest must issue. Form of warrant.
1428. Minutes, how kept.
1429. The plea, and how put in.
1430. Issue, how tried.
1431. Change of venue, when granted.
1432. Upon change of venue, papers, etc., must be transmitted. Proceedings on change of venue.
1433. Postponement of the trial.
1434. Defendant to be present.
1435. Jury trial, when to be demanded. Formation of the jury.
1436. Challenges.
1437. Oath of jurors.
1438. Trial, how conducted.
1439. Court to decide questions of law, but not to charge in respect to matters of fact.
1440. Jury may decide in Court, or retire. Oath of officer on their retirement.
1441. Verdict of jury, how delivered and entered.
1442. Verdict, when several defendants are tried together.
1443. Jury, when to be discharged without a verdict.
1444. If discharged, defendant may be tried again.
1445. Proceedings on plea of guilty or on conviction.
1446. Judgment of fine may direct imprisonment.
1447. Defendant, on acquittal, to be discharged. Order that prosecutor pay costs.
1448. Judgment against prosecutor for costs.
1449. Judgment, when to be rendered.
1450. When defendant may move for a new trial or in arrest of judgment.
1451. New trial, grounds of.

SECTION 1452. Grounds of motion in arrest of judgment.

1453. Judgment to be entered in the minutes.

1454. If judgment of acquittal or imposing a fine only, defendant to be discharged.

1455. Judgment of imprisonment, how executed.

1456. Judgment that defendant be imprisoned until he pay a fine, how executed.

1457. Fines, disposition of.

1458. Defendant may be admitted to bail.

1459. Subpoenas.

1460. Entitling affidavits.

1461. "Police Courts" defined.

1426. (§ 608.) All proceedings and actions before a Justice's or Police Court, for a public offense of which such Courts have jurisdiction, must be commenced by complaint under oath, setting forth the offense charged, with such particulars of time, place, person, and property as to enable the defendant to understand distinctly the character of the offense complained of, and to answer the complaint.

Proceedings must be commenced by complaint.

1427. (§ 610.) If the Justice of the Peace, or Police Justice, is satisfied therefrom that the offense complained of has been committed, he must issue a warrant of arrest, which must be substantially in the following form :

When warrant of arrest must issue.

COUNTY OF ———.

The People of the State of California to any Sheriff, Constable, Marshal, or Policeman in this State:

Form of warrant.

Complaint upon oath having been this day made before me ——— (Justice of the Peace or Police Justice, as the case may be), by C. D., that the offense of (designating it generally) has been committed, and accusing E. F. thereof; you are therefore commanded forthwith to arrest the above named E. F. and bring him before me forthwith, at (naming the place.)

Witness my hand and seal at ———, this ——— day of ———, A. D. ———.

A. B.

1428. (§ 613.) A docket must be kept by the Justice of the Peace or Police Justice, or by the Clerk of the Courts held by them, if there is one, in which

Minutes, how kept.

must be entered each action and the proceedings of the Court therein.

The plea,
and how
put in.

1429. (§ 611.) The defendant may make the same plea as upon an indictment, as provided in Section 1016. His plea must be oral, and entered upon the minutes.

Issue, how
tried.

1430. (§§ 611, 614.) Upon a plea other than a plea of guilty, if the defendant does not demand a trial by jury, or an adjournment or change of venue is not granted, the Court must proceed to try the case.

Change of
venue,
when
granted.

1431. (§ 611.) If the action or proceeding is in a Justice's Court, a change of the place of trial may be had at any time before the trial commences:

1. When it appears from the affidavit of the defendant that he has reason to believe, and does believe, that he cannot have a fair and impartial trial before the Justice about to try the case, by reason of the prejudice or bias of such Justice, the cause must be transferred to another Justice of the same or an adjoining township;

2. When it appears from affidavits that the defendant cannot have a fair and impartial trial, by reason of the prejudice of the citizens of the township, the cause must be transferred to a Justice of a township where the same prejudice does not exist.

Upon
change of
venue,
papers, etc.,
must be
trans-
mitted.

Proceed-
ings on
change of
venue.

1432. (§ 611.) When a change of the place of trial is ordered, the Justice must transmit to the Justice before whom the trial is to be had all the original papers in the cause, with a certified copy of the minutes of his proceedings; and upon receipt thereof, the Justice to whom they are delivered must proceed with the trial in the same manner as if the proceeding or action had been originally commenced in his Court.

Postpone-
ment of the
trial.

1433. (§ 611.) Before the commencement of a trial in any of the Courts mentioned in this Chapter,

either party may, upon good cause shown, have a reasonable postponement thereof.

1434. (§ 612.) The defendant must be personally present before the trial can proceed. Defendant to be present.

1435. (§ 614.) Before the Court hears any testimony upon the trial, the defendant may demand a trial by jury. The formation of the jury is provided for in Chapter I, Title III, Part I of THE CODE OF CIVIL PROCEDURE. Jury trial, when to be demanded.
Formation of the jury.

1436. (§ 615.) The same challenges may be taken by either party to the panel of jurors, or to any individual juror, as on the trial of an indictment for a misdemeanor; but the challenge must in all cases be tried by the Court. Challenges.

1437. (§ 616.) The Court must administer to the jury the following oath: "You do swear that you will well and truly try this issue between the People of the State of California and A. B., the defendant, and a true verdict render according to the evidence." Oath of jurors.

1438. (§ 617.) After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public and in the presence of the defendant. Trial, how conducted.

1439. (§ 618.) The Court must decide all questions of law which may arise in the course of the trial, but can give no charge with respect to matters of fact. Court to decide questions of law, but not to charge in respect to matters of fact.

1440. (§ 619.) After hearing the proofs and allegations, the jury may decide in Court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You do swear that you will keep this jury together in some quiet and convenient place; that you will not permit any person to speak to them, nor speak to them yourself, unless by order of the Court, or to ask them Jury may decide in Court or retire.
Oath of officer on their retirement

whether they have agreed upon a verdict; and that you will return them into Court when they have so agreed, or when ordered by the Court."

Verdict of jury, how delivered and entered.

1441. (§§ 620, 621.) The verdict of the jury must in all cases be general. When the jury have agreed on their verdict, they must deliver it publicly to the Court, who must enter, or cause it to be entered, in the minutes.

Verdict, when several defendants are tried together.

1442. (§ 622.) When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

Jury, when to be discharged without a verdict.

1443. (§ 623.) The jury cannot be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the Court sooner discharges them.

If discharged, defendant may be tried again.

1444. (§ 624.) If the jury is discharged, as provided in the last section, the Court may proceed again to the trial, in the same manner as upon the first trial, and so on, until a verdict is rendered.

Proceedings on plea of guilty or on conviction.

1445. (§ 625.) When the defendant pleads guilty, or is convicted, either by the Court or by a jury, the Court must render judgment thereon of fine and imprisonment, or both, as the case may be.

Judgment of fine may direct imprisonment

1446. (§ 626.) A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied, in the proportion of one day's imprisonment for every two dollars of the fine.

Defendant, on acquittal, to be discharged.

1447. (§ 627.) When the defendant is acquitted, either by the Court or by the jury, he must be immediately discharged; and if the Court certify in the minutes that the prosecution was malicious or without

probable cause, it may order the prosecutor to pay the costs of the action, or to give satisfactory security by a written undertaking, with one or more sureties, to pay the same within thirty days after the trial.

Order that
prosecutor
pay costs.

1448. (§ 628.) If the prosecutor does not pay the costs, or give security therefor, the Court may enter judgment against him for the amount thereof, which may be enforced in all respects in the same manner as a judgment rendered in a civil action.

Judgment
against
prosecutor
for costs.

1449. (§ 630.) After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the Court must appoint a time for rendering judgment, which must not be more than two days nor less than six hours after the verdict is rendered, and must hold the defendant to bail to appear for judgment, and in default of bail he must be committed.

Judgment,
when to be
rendered.

1450. (§ 631.) At any time before judgment, defendant may move for a new trial or in arrest of judgment.

When
defendant
may move
for a new
trial or in
arrest of
judgment.

1451. (§ 632.) A new trial may be granted in the following cases :

New trial,
grounds of.

1. When the trial has been had in the absence of the defendant, unless he voluntarily absent himself, with full knowledge that a trial is being had;

2. When the jury has received any evidence out of Court;

3. When the jury has separated without leave of the Court, after having retired to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case;

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors;

5. When there has been error in the decision of the

Same. Court, given on any question of law arising during the course of the trial;

6. When the verdict is contrary to law or evidence;

7. When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial; but when a motion for a new trial is made upon this ground, the defendant must produce at the hearing the affidavits of the witnesses by whom such newly discovered evidence is expected to be given.

Grounds of motion in arrest of judgment.

1452. (§ 633.) The motion in arrest of judgment may be founded on any substantial defect in the complaint, and the effect of an arrest of judgment is to place the defendant in the same situation in which he was before the trial was had.

Judgment to be entered in the minutes.

1453. (§ 634.) If the judgment is not arrested, or a new trial granted, judgment must be pronounced at the time appointed and entered in the minutes of the Court.

If judgment of acquittal or imposing a fine only, defendant to be discharged.

1454. (§ 635.) If judgment of acquittal is given, or judgment imposing a fine only, without imprisonment for non-payment, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

Judgment of imprisonment, how executed.

1455. (§ 636.) When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the Sheriff, Marshal, or other officer, which is a sufficient warrant for its execution.

Judgment that defendant be imprisoned until he pay a fine, how executed.

1456. (§ 637.) When a judgment is entered imposing a fine, or ordering the defendant to be imprisoned until the fine is paid, he must be held in custody during the time specified in the judgment, unless the fine is sooner paid.

1457. (§§ 638, 639.) Upon payment of the fine, the officer must discharge the defendant, if he is not detained for any other legal cause, and apply the money to the payment of the expenses of the prosecution, and pay over the residue, if any, within ten days, to the County or City Treasurer, according as the offense is prosecuted in a Justice's or Police Court. If a fine is imposed, and paid before commitment, it must be applied as prescribed in this section.

Fines,
disposition
of.

1458. (§ 640.) The defendant, at any time after his arrest, and before conviction, may be admitted to bail. The provisions of this Code relative to bail are applicable to bail in Justices' or Police Courts.

Defendant
may be
admitted to
bail.

1459. The Justice or Judge of either of the Courts mentioned in this Chapter may issue subpoenas for witnesses, as provided in Section 1326, and punish disobedience thereof, as provided in Section 1331.

Subpoenas.

1460. The provisions of Section 1401, in respect to entitling affidavits, are applicable to proceedings in the Courts mentioned in this Chapter.

Entitling
affidavits.

1461. The term "Police Courts," as used in this and the succeeding Chapter, includes Police Judges' Courts, Police Courts, and all Courts held by Mayors or Recorders in incorporated cities or towns.

"Police
Courts"
defined.

CHAPTER II.

APPEALS TO COUNTY COURTS.

SECTION 1466. Appeals, when allowed.

1467. Appeals, how taken, heard, and determined.

1468. Statement on appeal.

1469. If new trial granted, in what Court had.

1470. Proceedings, if appeal is dismissed or judgment affirmed.

Appeals,
when
allowed.

1466. (§ 481.) Either party may appeal to the County Court of the county from a judgment of a Justice's or Police Court, in like cases and for like cause as appeals may be taken to the Supreme Court; but no appeal can be taken from a judgment of the Police Judge's Court of San Francisco, imposing a fine only of less than twenty dollars.

Appeals,
how taken,
heard, and
determined

1467. (§ 482.) The appeal is taken, heard, and determined as provided in Title IX, Part II of this Code.

Statement
on appeal.

1468. The appeal to the County Court from the judgment of a Justice's or Police Court is heard upon a statement of the case settled by the Justice or Police Judge, embodying such rulings of the Court as are excepted to, which statement must be filed with and settled by the Court within five days after filing notice of appeal.

If new trial
granted,
in what
Court had.

1469. If a new trial is granted upon appeal, it must be had in the County Court, except the appeal is from the Police Judge's Court of San Francisco, in which case a copy of the order granting a new trial must be remitted to that Court, and the trial had therein.

Proceed-
ings, if
appeal is
dismissed
or
judgment
affirmed.

1470. If the appeal is dismissed or the judgment affirmed, a copy of the order of dismissal or judgment of affirmance must be remitted to the Court below, which may proceed to enforce its sentence.

TITLE XII.

OF SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

- CHAPTER I. *Of the writ of habeas corpus.*
II. *Of Coroners' inquests and duties of Coroners.*
III. *Of search warrants.*
IV. *Proceedings against fugitives from justice.*
V. *Miscellaneous provisions respecting special proceedings of a criminal nature.*
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CHAPTER I.

OF THE WRIT OF HABEAS CORPUS.

- SECTION 1473. Who may prosecute writ.
1474. Application for, how made.
1475. By whom issued, and before whom returnable.
1476. Writ must be granted without delay.
1477. Writ, what to contain.
1478. How served.
1479. Proceedings upon disobedience to the writ.
1480. Return, what to contain.
1481. Body must be produced, when.
1482. When hearing may proceed without production of the body.
1483. Hearing on return.
1484. Proceedings on the hearing.
1485. When Court may discharge the party.
1486. When to remand party.
1487. Grounds of discharge in certain cases.
1488. Not to be discharged for defect of form in warrant.
1489. Court may examine witnesses, and discharge, hold to bail, or recommit.
1490. Writ for purposes of bail.
1491. Judge may take bail.
1492. Judge, when to remand.
1493. Person in illegal, may be committed to legal, custody.
1494. Disposition of party, pending proceedings on return.

SECTION 1495. Defect of form in the writ immaterial, when.

1496. Imprisonment after discharge, in what cases permitted.

1497. Warrant may issue instead of writ, in certain cases.

1498. Warrant may include person charged with illegal detention.

1499. Warrant, how executed.

1500. Return and hearing on.

1501. Party may be discharged or remanded.

1502. Writ and process may issue and be served at any time.

1503. By whom issued and when returnable.

1504. Where returnable.

1505. Damages, by whom recovered, for failure to issue or obey the writ.

Who may
prosecute
writ.

1473. Every person unlawfully committed, detained, confined, or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint.

Application
for, how
made.

1474. Application for the writ is made by petition, signed either by the party for whose relief it is intended, or by some person in his behalf, and must specify:

1. That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the officer or person by whom he is so confined or restrained, and the place where, naming all the parties, if they are known, or describing them, if they are not known;

2. If the imprisonment is alleged to be illegal, the petition must also state in what the alleged illegality consists;

3. The petition must be verified by the oath or affirmation of the party making the application.

By whom
issued, and
before
whom
returnable

1475. The writ of habeas corpus may be granted:

1. By the Supreme Court, or any Justice thereof, upon petition on behalf of any person restrained of his liberty in this State. When so issued, it may be

made returnable before the Court or any Justice thereof, or before any District or County Court, or any Judge thereof;

2. By the District Courts, or a Judge thereof, upon petition on behalf of any person restrained of his liberty in their respective districts;

3. By the County Courts, or a Judge thereof, upon petition on behalf of any person restrained of his liberty in their respective counties.

1476. Any Court or Judge authorized to grant the writ, to whom a petition therefor is presented, must, if it appear that the writ ought to issue, grant the same without delay.

Writ must
be granted
without
delay.

1477. The writ must be directed to the person having custody of or restraining the person on whose behalf the application is made, and must command him to have the body of such person before the Court or Judge before whom the writ is returnable, at a time and place therein specified.

Writ, what
to contain.

1478. If the writ is directed to the Sheriff or other ministerial officer of the Court out of which it issues, it must be delivered by the Clerk to such officer without delay, as other writs are delivered for service. If it is directed to any other person, it must be delivered to the Sheriff, and be by him served upon such person by delivering the same to him without delay. If the person to whom the writ is directed cannot be found, or refuses admittance to the officer or person serving or delivering such writ, it may be served or delivered by leaving it at the residence of the person to whom it is directed, or by affixing it to some conspicuous place on the outside either of his dwelling house or of the place where the party is confined or under restraint.

How
served.

Proceed-
ings upon
disobedi-
ence to the
writ.

1479. If the person to whom the writ is directed refuses, after service, to obey the same, the Court or Judge, upon affidavit, must issue an attachment against such person, directed to the Sheriff or Coroner, commanding him forthwith to apprehend such person and bring him immediately before such Court or Judge; and upon being so brought, he must be committed to the jail of the county until he makes due return to such writ, or is otherwise legally discharged.

Return,
what to
contain.

1480. The person upon whom the writ is served must state in his return, plainly and unequivocally:

1. Whether he has or has not the party in his custody, or under his power or restraint;

2. If he has the party in his custody or power, or under his restraint, he must state the authority and cause of such imprisonment or restraint;

3. If the party is detained by virtue of any writ, warrant, or other written authority, a copy thereof must be annexed to the return, and the original produced and exhibited to the Court or Judge on the hearing of such return;

4. If the person upon whom the writ is served had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ of habeas corpus, but has transferred such custody or restraint to another, the return must state particularly to whom, at what time and place, for what cause, and by what authority such transfer took place;

5. The return must be signed by the person making the same, and, except when such person is a sworn public officer, and makes such return in his official capacity, it must be verified by his oath.

Body must
be
produced,
when.

1481. The person to whom the writ is directed, if it is served, must bring the body of the party in his custody or under his restraint, according to the com-

mand of the writ, except in the cases specified in the next section.

1482. When, from sickness or infirmity of the person directed to be produced, he cannot, without danger, be brought before the Court or Judge, the person in whose custody or power he is may state that fact in his return to the writ, verifying the same by affidavit. If the Court or Judge is satisfied of the truth of such return, and the return to the writ is otherwise sufficient, the Court or Judge may proceed to decide on such return, and to dispose of the matter as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

When hearing may proceed without production of the body.

1483. The Court or Judge before whom the writ is returned must, immediately after the return, proceed to hear and examine the return, and such other matters as may be properly submitted to their hearing and consideration.

Hearing on return.

1484. The party brought before the Court or Judge, on the return of the writ, may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge. The Court or Judge must thereupon proceed in a summary way to hear such proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the justice of the case may require, and have full power and authority to require and compel the attendance of witnesses, by process of subpoena and attachment, and to do and perform all other acts and things necessary to a full and fair hearing and determination of the case.

Proceedings on the hearing.

Judge,
when to
remand.

1492. If a party brought before the Court or Judge on the return of the writ is not entitled to his discharge, and is not bailed, where such bail is allowable, the Court or Judge must remand him to custody or place him under the restraint from which he was taken, if the person under whose custody or restraint he was is legally entitled thereto.

Person in
illegal,
may be
committed
to legal
custody.

1493. In cases where any party is held under illegal restraint or custody, or any other person is entitled to the restraint or custody of such party, the Judge or Court may order such party to be committed to the restraint or custody of such person as is by law entitled thereto.

Disposition
of party,
pending
proceedings
on return.

1494. Until judgment is given on the return, the Court or Judge before whom any party may be brought on such writ may commit him to the custody of the Sheriff of the county, or place him in such care or under such custody as his age or circumstances may require.

Defect of
form in the
writ immat-
terial,
when.

1495. No writ of habeas corpus can be disobeyed for defect of form, if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him, and the Court or Judge before whom he is to be brought.

Imprison-
ment after
discharge,
in what
cases
permitted.

1496. No person who has been discharged by the order of the Court or Judge upon habeas corpus can be again imprisoned, restrained, or kept in custody for the same cause, except in the following cases:

1. If he has been discharged from custody on a criminal charge, and is afterwards committed for the same offense, by legal order or process;

2. If, after a discharge for defect of proof, or for any defect of the process, warrant, or commitment in a criminal case, the prisoner is again arrested on suffi-

cient proof and committed by legal process for the same offense.

1497. When it appears to any Court, or Judge, authorized by law to issue the writ of habeas corpus, that any one is illegally held in custody, confinement, or restraint, and that there is reason to believe that such person will be carried out of the jurisdiction of the Court or Judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ of habeas corpus can be enforced, such Court or Judge may cause a warrant to be issued, reciting the facts, and directed to the Sheriff, Coroner, or Constable of the county, commanding such officer to take such person thus held in custody, confinement, or restraint, and forthwith bring him before such Court or Judge, to be dealt with according to law.

Warrant may issue instead of writ, in certain cases.

1498. The Court or Judge may also insert in such warrant a command for the apprehension of the person charged with such illegal detention and restraint.

Warrant may include person charged with illegal detention.

1499. The officer to whom such warrant is delivered must execute it by bringing the person therein named before the Court or Judge who directed the issuing of such warrant.

Warrant, how executed.

1500. The person alleged to have such party under illegal confinement or restraint may make return to such warrant as in case of a writ of habeas corpus, and the same may be denied, and like allegations, proofs, and trial may thereupon be had as upon a return to a writ of habeas corpus.

Return and hearing on.

1501. If such party is held under illegal restraint or custody, he must be discharged; and if not, he must be restored to the care or custody of the person entitled thereto.

Party may be discharged or remanded.

Writ and
process
may issue
and be
served at
any time.

1502. Any writ or process authorized by this Chapter may be issued and served on any day or at any time.

By whom
issued and
when
returnable

1503. All writs, warrants, process, and subpœnas authorized by the provisions of this Chapter must be issued by the Clerk of the Court, and, except subpœnas, must be sealed with the seal of such Court, and served and returned forthwith, unless the Court or Judge shall specify a particular time for any such return.

Where
returnable

1504. All such writs and process, when issued by order of a Judge, must be returned before him at the county seat, and there heard and determined.

Damages,
by whom
recovered,
for failure
to issue or
obey the
writ.

1505. If any Judge, after a proper application is made, refuses to grant an order for a writ of habeas corpus, or if the officer or person to whom such writ may be directed, refuses obedience to the command thereof, he shall forfeit and pay to the person aggrieved a sum not exceeding five thousand dollars, to be recovered by action in any Court of competent jurisdiction.

CHAPTER II.

OF CORONERS' INQUESTS AND DUTIES OF CORONERS.

SECTION 1510. Coroner to summon jury to inquire into cause of death in certain cases.

1511. Jurors to be sworn.

1512. Witnesses to be summoned.

1513. Witnesses compelled to attend.

1514. Verdict of jury in writing. What to contain.

1515. Testimony in writing, and where filed.

1516. Exception.

1517. Coroner to issue warrant, when.

1518. Form of warrant.

1519. How served.

1510. When a Coroner is informed that a person has been killed, or has committed suicide, or has suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, he must go to the place where the body is, cause it to be exhumed, if it has been interred, and summon not less than nine nor more than fifteen persons, qualified by law to serve as jurors, to appear before him forthwith, at the place where the body of deceased is, to inquire into the cause of the death.

Coroner to
summon
jury to
inquire
into cause
of death in
certain
cases.

1511. When six or more of the jurors attend, they must be sworn by the Coroner to inquire who the person was, and when, where, and by what means he came to his death, and into the circumstances attending his death; and to render a true verdict thereon, according to the evidence offered them, or arising from the inspection of the body.

Jurors to
be sworn.

1512. Coroners may issue subpoenas for witnesses, returnable forthwith, or at such time and place as they may appoint, which may be served by any competent person. They must summon and examine as witnesses every person who, in their opinion, or that of any of the jury, has any knowledge of the facts, and may summon a surgeon or physician to inspect the body and give a professional opinion as to the cause of the death.

Witnesses
to be
summoned.

1513. A witness served with a subpoena may be compelled to attend and testify, or punished by the Coroner for disobedience, in like manner as upon a subpoena issued by a Justice of the Peace.

Witnesses
compelled
to attend.

1514. After inspecting the body and hearing the testimony, the jury must render their verdict and certify the same by an inquisition in writing, signed by them, and setting forth who the person killed is, and

Verdict of
jury in
writing.

What to
contain.

when, where, and by what means he came to his death; and if he was killed, or his death occasioned by the act of another, by criminal means, who is guilty thereof.

Testimony
in writing,
and where
filed.

1515. The testimony of the witnesses examined before the Coroner's jury must be reduced to writing by the Coroner, or under his direction, and forthwith filed by him, with the inquisition, in the office of the Clerk of the County Court of the county.

Exception.

1516. If, however, the person charged with the commission of the offense is arrested before the inquisition can be filed, the Coroner must deliver the same, with the testimony taken, to the magistrate before whom such person may be brought, who must return the same, with the depositions and statement taken before him, to the office of the Clerk of the County Court of the county.

Coroner to
issue
warrant,
when.

1517. If the jury find that the person was killed by another, under circumstances not excusable or justifiable by law, or that his death was occasioned by the act of another by criminal means, and the party committing the act is ascertained by the inquisition, and is not in custody, the Coroner must issue a warrant, signed by him, with his name of office, into one or more counties, as may be necessary for the arrest of the person charged.

Form of
warrant.

1518. The Coroner's warrant must be in substantially the following form:

COUNTY OF —.

The People of the State of California, to any Sheriff, Constable, Marshal, or Policeman in this State:

An inquisition having been this day found by a Coroner's jury before me, stating that A. B. has come to his death by the act of C. D., by criminal means (or as the case may be, as found by the inquisition), you are therefore commanded forthwith to arrest the

above named C. D., and take him before the nearest or most accessible magistrate in this county.

Given under my hand this — day of —, A. D. eighteen —.

E. F., Coroner of the County of —.

1519. The Coroner's warrant may be served in any county, and the officer serving it must proceed thereon, in all respects, as upon a warrant of arrest on an information before a magistrate, except that when served in another county it need not be indorsed by a magistrate of that county. How served.

CHAPTER III.

OF SEARCH WARRANTS.

SECTION 1523. Search warrant defined.

- 1524. Upon what grounds it may issue.
- 1525. It cannot be issued but upon probable cause, etc.
- 1526. Magistrates must examine, on oath, complainant, etc.
- 1527. Depositions, what to contain.
- 1528. When to issue warrant.
- 1529. Form of warrant.
- 1530. By whom served.
- 1531. Officer may break open door, etc., to execute warrant.
- 1532. May break open door, etc., to liberate person acting in his aid.
- 1533. When warrant may be served in the night.
- 1534. Within what time warrant must be executed.
- 1535. Officer to give receipt for property taken.
- 1536. Property, how disposed of.
- 1537. Return of warrant and delivery of inventory of property taken.
- 1538. Copy of inventory, to whom delivered.
- 1539. Proceedings, if grounds of warrant are controverted.
- 1540. Property, when to be restored to person from whom it was taken.
- 1541. Depositions, warrant, etc., to be returned by magistrate to County Court.
- 1542. When magistrate may direct defendant to be searched in his presence.

Search
warrant
defined.

1523. (§ 642.) A search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate.

Upon what
grounds it
may issue.

1524. (§ 643.) It may be issued upon either of the following grounds:

1. When the property was stolen or embezzled; in which case it may be taken on the warrant, from any place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or from any person in whose possession it may be;

2. When it was used as the means of committing a felony; in which case it may be taken on the warrant from the place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or from any person in whose possession it may be;

3. When it is in the possession of any person with the intent to use it as the means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered; in which case it may be taken on the warrant from such person, or from any place occupied by him or under his control, or from the possession of the person to whom he may have so delivered it.

It cannot
be issued
but upon
probable
cause, etc.

1525. (§ 644.) A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched.

Magis-
trates must
examine,
on oath,
complain-
ant, etc.

1526. (§ 645.) The magistrate must, before issuing the warrant, examine on oath the complainant, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

1527. (§ 646.) The depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist. Depositions, what to contain.

1528. (§ 647.) If the magistrate is thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the magistrate. When to issue warrant.

1529. (§ 648.) The warrant must be in substantially the following form: Form of warrant.

COUNTY OF —.

The People of the State of California to any Sheriff, Constable, Marshal, or Policeman in the County of —:

Proof, by affidavit, having been this day made before me by (naming every person whose affidavit has been taken), that (stating the grounds of the application, according to Section 1525, or, if the affidavit be not positive, that there is probable cause for believing that—stating the ground of the application in the same manner), you are therefore commanded, in the day-time (or at any time of the day or night, as the case may be, according to Section 1533), to make immediate search on the person of C. D. (or in the house situated —, describing it or any other place to be searched, with reasonable particularity, as the case may be) for the following property: (describing it with reasonable particularity); and if you find the same or any part thereof, to bring it forthwith before me at (stating the place).

Given under my hand, and dated this — day of —, A. D. eighteen —.

E. F., Justice of the Peace (or as the case may be).

1530. (§ 640.) A search warrant may in all cases be served by any of the officers mentioned in its directions, but by no other person, except in aid of the By whom served.

officer on his requiring it, he being present and acting in its execution.

Officer may break open door, etc., to execute warrant.

1531. (§ 650.) The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

May break open door, etc., to liberate person acting in his aid.

1532. (§ 651.) He may break open any outer or inner door or window of a house, for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

When warrant may be served in the night.

1533. (§ 652.) The magistrate must insert a direction in the warrant that it be served in the day-time, unless the affidavits are positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night.

Within what time warrant must be executed.

1534. (§ 653.) A search warrant must be executed and returned to the magistrate who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

Officer to give receipt for property taken.

1535. (§ 654.) When the officer takes property under the warrant, he must give a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he must leave it in the place where he found the property.

Property, how disposed of.

1536. (§ 655.) When the property is delivered to the magistrate, he must, if it was stolen or embezzled, dispose of it as provided in Sections 1408 to 1413, inclusive. If it was taken on a warrant issued on the grounds stated in the second and third subdivisions of

Section 1524, he must retain it in his possession, subject to the order of the Court to which he is required to return the proceedings before him, or of any other Court in which the offense in respect to which the property taken is triable.

1537. (§ 656.) The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate at the time, to the following effect: "I, R. S., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

Return of
warrant
and deliv-
ery of
inventory
of property
taken.

1538. (§ 657.) The magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

Copy of
inventory,
to whom
delivered.

1539. (§§ 658, 659.) If the grounds on which the warrant was issued be controverted, he must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and authenticated in the manner prescribed in Section 869.

Proceed-
ings, if
grounds of
warrant
are contro-
verted.

1540. (§ 660.) If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

Property,
when to be
restored to
person
from whom
it was
taken.

1541. (§ 661.) The magistrate must annex together the depositions, the search warrant and return,

Depositions, warrant, etc., to be returned by magistrate to County Court.

and the inventory, and return them to the next term of the County Court having power to inquire into the offenses in respect to which the search warrant was issued, at or before its opening on the first day.

When magistrate may direct defendant to be searched in his presence.

1542. (§ 664.) When a person charged with a felony is supposed by the magistrate before whom he is brought to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order, or to the order of the Court in which the defendant may be tried.

CHAPTER IV.

PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

SECTION 1547. Rewards for the apprehension of fugitives from justice.

1548. Fugitives from another State, when to be delivered up.

1549. Magistrate to issue warrant.

1550. Proceedings for the arrest and commitment of the person charged.

1551. When and for what time to be committed.

1552. His admission to bail.

1553. Magistrate must notify District Attorney of the arrest.

1554. Duty of the District Attorney.

1555. Person arrested, when to be discharged.

1556. Magistrate to return his proceedings to the next County Court. Proceedings thereon.

1557. Fugitives from this State. Accounts of persons employed in procuring surrender to be paid out of the State Treasury.

1558. No fee or reward to be paid to or received by any public officer procuring the surrender of fugitives, etc.

Rewards for the apprehension of fugitives from justice.

1547. The Governor may offer a reward, not exceeding one thousand dollars, payable out of the General Fund, for the apprehension:

1. Of any convict who has escaped from the State Prison; or,

2. Of any person who has committed, or is charged with the commission of, an offense punishable with death.

1548. (§ 665.) A person charged in any State of the United States with treason, felony, or other crime, who flees from justice and is found in this State, must, on demand of the executive authority of the State from which he fled, be delivered up by the Governor of this State, to be removed to the State having jurisdiction of the crime.

Fugitives from another State, when to be delivered up.

1549. (§ 666.) A magistrate may issue a warrant for the apprehension of a person so charged, who flees from justice and is found in this State.

Magistrate to issue warrant.

1550. (§ 667.) The proceedings for the arrest and commitment of a person charged are, in all respects, similar to those provided in this Code for the arrest and commitment of a person charged with a public offense committed in this State, except that an exemplified copy of an indictment found, or other judicial proceedings had against him in the State in which he is charged to have committed the offense, may be received as evidence before the magistrate.

Proceedings for the arrest and commitment of the person charged.

1551. (§ 668.) If, from the examination, it appear that the accused has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody in his county, for such time, to be specified in the warrant, as the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the Executive of this State, on the requisition of the executive authority of the State in which he committed the offense, unless he gives bail as provided in the next section, or until he is legally discharged.

When and for what time to be committed

1552. (§ 669.) The magistrate may admit the person arrested to bail by an undertaking with suffi-

His admission to bail.

cient securities, and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to arrest upon the warrant of the Governor of this State.

Magistrate
must notify
District
Attorney of
the arrest.

1553. (§ 670.) Immediately upon the arrest of the person charged, the magistrate must give notice thereof to the District Attorney of the county.

Duty of the
District
Attorney.

1554. (§ 671.) The District Attorney must immediately thereafter give notice to the executive authority of the State, or to the Prosecuting Attorney or presiding Judge of the Court of the city or county within the State having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged.

Person
arrested,
when to be
discharged

1555. (§ 672.) The person arrested must be discharged from custody or bail, unless, before the expiration of the time designated in the warrant or undertaking, he is arrested under the warrant of the Governor of this State.

Magistrate
to return
his pro-
ceedings to
the next
County
Court.

Proceed-
ings
thereon.

1556. (§ 673.) The magistrate must return his proceedings to the next County Court of the county, which must thereupon inquire into the cause of the arrest and detention of the person charged, and if he is in custody, or the time for his arrest has not elapsed, it may discharge him from detention, or may order his undertaking of bail to be canceled, or may continue his detention for a longer time, or readmit him to bail, to appear and surrender himself within a time to be specified in the undertaking.

Fugitives
from this
State.

1557. (§ 674.) When the Governor of this State, in the exercise of the authority conferred by Section 2, Article IV of the Constitution of the United States, or by the laws of this State, demands from the executive authority of any State of the United States, or of any

foreign Government, the surrender to the authorities of this State of a fugitive from justice, who has been found and arrested in such State or foreign Government, the accounts of the person employed by him to bring back such fugitive must be audited by the Board of Examiners, and paid out of the State Treasury.

Accounts of persons employed in procuring surrender to be paid out of the State Treasury.

1558. No compensation, fee, or reward of any kind can be paid to or received by a public officer of this State, or other person, for a service rendered in procuring from the Governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this State, or detaining him therein, except as provided for in such section.

No fee or reward to be paid to or received by any public officer procuring the surrender of fugitives, etc.

CHAPTER V.

MISCELLANEOUS PROVISIONS RESPECTING SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

SECTION 1562. Parties to special proceedings, how designated.

1563. Entitling affidavits.

1564. Subpœnas.

1562. The party prosecuting a special proceeding of a criminal nature is designated in this Code as the complainant, and the adverse party as the defendant.

Parties to special proceedings, how designated

1563. The provisions of Section 1401, in respect to entitling affidavits, are applicable to such proceedings.

Entitling affidavits.

1564. The Courts and magistrates before whom such proceedings are prosecuted may issue subpœnas for witnesses, and punish their disobedience in the same manner as in a criminal action.

Subpœnas.

TITLE XIII.

PROCEEDINGS FOR BRINGING PERSONS IMPRISONED
IN THE STATE PRISON, OR THE JAIL OF ANOTHER
COUNTY, BEFORE A COURT.

SECTION 1567. Persons imprisoned in the State Prison or the jail of another county, how brought before a Court.

Persons im-
prisoned in
the State
Prison or
the jail of
another
county, how
brought
before a
Court.

1567. (§ 683.) When it is necessary to have a person imprisoned in the State Prison brought before any Court, or a person imprisoned in a County Jail brought before a Court sitting in another county, an order for that purpose may be made by the Court and executed by the Sheriff of the county where it is made.

TITLE XIV.

DISPOSITION OF FINES AND FORFEITURES.

SECTION 1570. Fines and forfeitures, how disposed of.

Fines and
forfeitures,
how
disposed of.

1570. (§ 679.) All fines and forfeitures collected in any Court, must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred; and after such costs are paid, the residue must be paid to the County Treasurer of the county in which the Court is held.

NOTE.—The section numbers of Part II of this Code, "Criminal Procedure," placed thus: (§ 23), (§ 331), and so on, to many of the sections, indicate the sections of the original Act of May 1st, 1851, "Criminal Practice," which are retained for convenience in reference.

PART III.

OF THE STATE PRISON AND COUNTY JAILS.



PART III.

OF THE STATE PRISON AND COUNTY JAILS.

TITLE I.

OF THE STATE PRISON AND THE DISCHARGE OF PRISONERS THEREFROM BEFORE THEIR TERM OF SERVICE EXPIRES.

CHAPTER I. *Of the State Prison.*

II. *Of the discharge of prisoners before the expiration of their term of service.*

CHAPTER I.

OF THE STATE PRISON.

SECTION 1573. Under the charge and control of a Board of Directors.

1574. President pro tem of Senate, when to act as Director, etc.

1575. Compensation of Directors.

1576. Board must adopt rules and regulations.

1577. Board may appoint Warden and other officers.

1578. Duties of Clerk and other officers.

1579. Monthly reports of officers.

1580. Board must keep account of the funds received, etc., and report to the Governor.

1581. Persons convicted of offenses against the United States to be received in the prison.

1582. Disposition of insane prisoners.

1583. State Prison Fund.

SECTION 1584. State Prison Fund, how disbursed.

1585. Board cannot contract debts.

1586. Compensation of Sheriffs for transportation of convicts.

Under the charge and control of a Board of Directors. 1573. The State Prison is under the charge, control, and superintendence of a Board of Directors, consisting of the Governor, Lieutenant Governor, and Secretary of State.

President pro tem of Senate, when to act as Director, etc. 1574. In case of a vacancy in the office of Lieutenant Governor, the President pro tem of the Senate may perform the duties and receive the compensation provided for the Lieutenant Governor.

Compensation of Directors. 1575. The Board of Directors are to receive the sum of seventy-five dollars per month, each, for expenses incurred by them; in addition to which the Lieutenant Governor is paid the sum of ten dollars per day for each day's services rendered in the performance of any duty at the Prison.

Board must adopt rules and regulations 1576. The Board must adopt rules and regulations for the discipline of prisoners and the government of the prison, which rules must be printed, and copies thereof furnished to every officer appointed by the Board.

Board may appoint Warden and other officers. 1577. The Board may appoint a Warden, Clerk, and such other officers as may be necessary for the management and safe keeping of the prisoners.

Duties of Clerk and other officers. 1578. The Clerk must keep a record of the transactions of the Board, and he and the Warden and other officers appointed, must perform such other duties as are required by the Board or the rules and regulations adopted thereby.

Monthly reports of officers. 1579. The Warden and other officers appointed must make a monthly report to the Board, which must contain a statement of business done and transactions had in their several departments.

1580. The Board must keep correct accounts of all funds received from proceeds of convict labor, and appropriate such funds to the maintenance of the convicts and to the payment of prison expenses, and must make a full report to the Governor on the first Monday of each August next before the assembling of the Legislature, which report must contain a complete statement of the number and condition of the prisoners at the prison; the number and character of officers they have appointed, and the monthly pay received by each; the amount of expenses incurred, and for what; the amount and condition of personal property, belonging to the State, connected with the State Prison; and the actual condition of the buildings and property.

Board must keep account of the funds received, etc., and report to the Governor.

1581. The authorities of the State Prison must receive into the prison any person convicted of an offense against the United States, and keep such person in solitary confinement or at hard labor, or in confinement with or without hard labor, as provided in the order of the Court pronouncing sentence, until legally discharged, the United States supporting such convict, and paying the expenses of the execution of his sentence.

Persons convicted of offenses against the United States to be received in the prison.

1582. When the Physician, Warden, and Captain of the Yard of the State Prison, after an examination, are of opinion that any prisoner is insane, they must certify the fact under oath to the Governor, who may, in his discretion, order the removal of such prisoner to the Insane Asylum. As soon as the authorities of the asylum ascertain that such person is not insane, they must immediately notify the Warden of that fact, and thereupon the Warden must cause such prisoner to be at once returned to the prison, if his term of imprisonment has not expired.

Disposition of insane prisoners.

State
Prison
Fund.

1583. The moneys appropriated by the Legislature and the proceeds of the labor of prisoners constitute the State Prison Fund.

State
Prison
Fund, how
disbursed.

1584. The moneys in the State Prison Fund are applicable to the payment of the expenses of the prison, and the salaries of the Directors and officers thereof. The expenses and salaries must be audited and allowed by a Board of Examiners of State Prison accounts, consisting of the Attorney General, Treasurer, and Controller; after which, upon the order of the Board of Directors, the Controller must draw his warrant on the Treasurer therefor, and the Treasurer must pay the same out of such Fund.

Board
cannot
contract
debts.

1585. The Board of Directors cannot contract any debt or incur any liability binding upon the State.

Compensa-
tion of
Sheriffs for
transporta-
tion of
convicts.

1586. Sheriffs must receive for prisoners delivered at the State Prison all expenses necessarily incurred in their transportation, and also a just and reasonable compensation for their own services, the amount of the expenses and compensation in each case to be audited and allowed by the Board of Examiners, and paid out of any moneys in the State Treasury appropriated for that purpose.

CHAPTER II.

OF THE DISCHARGE OF PRISONERS BEFORE THE EXPIRATION OF THEIR TERM OF SERVICE.

SECTION 1590. Credits for good behavior, how and when allowed.

1591. Credits, when forfeited.

1592. Board to make rules and regulations to carry the provisions of this Chapter into effect.

1593. Board, when to report credits to Governor.

1594. Further powers of the Board.

1595. Board must report to the Legislature prisoners whom they think should be pardoned. Governor may pardon if Legislature recommend.

1590. The Board of State Prison Directors must grant to every prisoner confined in the State Prison, who well behaves himself, and who performs regular labor during good health, either for the State authorities or in the employ of any contractor using convict labor, a credit of five days for each month of such regular work and good behavior during the first two years of his imprisonment; of six days for each month of the third and fourth years; of seven days for each month of the fifth and sixth years; of eight days for each month of the seventh and eighth years; of nine days for each month of the ninth and tenth years; and of ten days for each month after ten years. Such credit is computed in favor of every such convict as a commutation of sentence, and is deducted from the entire term of penal servitude to which he has been sentenced.

Credits
for good
behavior,
how and
when
allowed.

1591. The rule of commutation fixed in the preceding section is to be so applied as that any refusal to labor, a breach of the prison rules, or other misconduct, works a forfeiture of the credits of time thus earned, or such part of it as the Warden or Resident Director may determine, subject to confirmation or rejection by the Board of Directors, on appeal by the prisoner. Unless the Board, on appeal, at its first session thereafter, rejects the forfeiture, it is confirmed. Credits once forfeited cannot be restored except by the Board, and then only when circumstances render such restoration urgently necessary. The above provisions apply to all persons now imprisoned in the State Prison, and the commutation must be computed from April fourth, A. D. eighteen hundred and sixty-four.

Credits,
when
forfeited.

1592. The Board may make such rules and regulations as may be necessary to carry into effect the provisions of this Chapter, and may declare and establish a proper scale or rate of debits and credits for good

Board to
make
rules and
regulations
to carry the
provisions
of this
Chapter
into effect.

conduct or misconduct, which shall accompany the rules of discipline of the prison, and, in a book to be kept for that purpose, must cause to be entered up, at the end of each month, the result of credits to which each prisoner may be entitled, and on the first day of each month announce such result to the prisoners. Every contractor employing convict labor must keep a similar record of the conduct of all prisoners employed by him, and submit the same for inspection to the Board at the end of each month, who must take the same into consideration in making up their decision.

Board,
when to
report
credits to
Governor.

1593. At the end of every month the Board must report to the Governor of this State the names of all prisoners whose terms of imprisonment are about to expire, by reason of the benefits of this Chapter, giving in such report the terms of their sentences, the date of imprisonment, the amount of total credits to the date of such report, and the date when their service would expire by limitation of sentence. The Governor, at the expiration of the term for which any prisoner has been sentenced, less the number of days allowed and credited to him, must order the release of such prisoner, by an order under his hand addressed to the Warden of the prison, in such mode and form as he may deem proper, and with or without restoration to citizenship, according in his discretion.

Further
powers of
the Board.

1594. The Board must grant and enter up in favor of such prisoners whom they may deem worthy, by reason of good conduct and industry, during the twelve months prior to the fourth day of April, A. D. eighteen hundred and sixty-four, the credits authorized by Section 1590, not exceeding thirty days, the same to be deducted from the term of their imprisonment.

Board must
report.

1595. The Board must report to the Legislature, at each regular session, the names of any persons confined in the State Prison who, in their judgment, ought

to be pardoned and set at liberty on account of good conduct or unusual terms of sentence, or any other cause which, in their opinion, should entitle such prisoners to a pardon. Whenever the Legislature, by a majority of both Houses, recommend to the Governor that any or all of the persons reported be pardoned by him, he may thereupon pardon such prisoners.

Governor
may
pardon.

TITLE II.

OF COUNTY JAILS.

- SECTION** 1597. County Jails, by whom kept and for what used.
 1598. Rooms required in County Jails.
 1599. Prisoners to be classified.
 1600. Prisoners committed must be actually confined.
 1601. Sheriff to receive prisoners committed by United States Courts.
 1602. Sheriff or Jailer answerable for safe keeping of such prisoners.
 1603. When jail of a contiguous county may be used.
 1604. Keeper of Jail in contiguous county to receive prisoners.
 1605. When jail in contiguous county to cease to be used.
 1606. Prisoners to be returned to proper county.
 1607. Prisoners may be removed in case of fire.
 1608. Prisoners may be removed in case of pestilence.
 1609. Papers served on Jailer for prisoner.
 1610. Guard for jail.
 1611. Sheriff to receive all persons duly committed.
 1612. Prisoners on civil process, when not to be received.
 1613. Prisoners may be required to labor.
 1614. Rules and regulations for the performance of labor.

1597. The common jails in the several counties of this State are kept by the Sheriffs of the counties in which they are respectively situated, and are used as follows:

County
Jails, by
whom kept
and for
what used.

1. For the detention of persons committed in order to secure their attendance as witnesses in criminal cases;

Same.

2. For the detention of persons charged with crime and committed for trial;

3. For the confinement of persons committed for contempt, or upon civil process, or by other authority of law;

4. For the confinement of persons sentenced to imprisonment therein upon a conviction for crime.

Rooms
required
in County
Jails.

1598. Each County Jail must contain a sufficient number of rooms to allow all persons belonging to either one of the following classes to be confined separately and distinctly from persons belonging to either of the other classes:

1. Persons committed on criminal process and detained for trial;

2. Persons already convicted of crime and held under sentence;

3. Persons detained as witnesses or held under civil process, or under an order imposing punishment for a contempt;

4. Males separately from females.

Prisoners
to be
classified.

1599. Persons committed on criminal process and detained for trial, persons convicted and under sentence, and persons committed upon civil process, must not be kept or put in the same room, nor shall male and female prisoners (except husband and wife) be kept or put in the same room.

Prisoners
committed
must be
actually
confined.

1600. A prisoner committed to the County Jail for trial or for examination, or upon conviction for a public offense, must be actually confined in the jail until he is legally discharged; and if he is permitted to go at large out of the jail, except by virtue of a legal order or process, it is an escape.

1601. The Sheriff must receive, and keep in the County Jail, any prisoner committed thereto by pro-

cess or order issued under the authority of the United States, until he is discharged according to law, as if he had been committed under process issued under the authority of this State; provision being made by the United States for the support of such prisoner.

Sheriff to receive prisoners committed by United States Courts.

1602. A Sheriff, to whose custody a prisoner is committed, as provided in the last section, is answerable for his safe keeping in the Courts of the United States, according to the laws thereof.

Sheriff or Jailer answerable for safe keeping of such prisoners.

1603. When there is no jail in the county, or when the jail becomes unfit or unsafe for the confinement of prisoners, the County Judge may, by a written appointment filed with the County Clerk, designate the jail of a contiguous county for the confinement of the prisoners of his county, or of any of them, and may at any time modify or annul the appointment.

When jail of a contiguous county may be used.

1604. A copy of the appointment, certified by the County Clerk, must be served on the Sheriff or Keeper of the jail designated, who must receive into his jail all prisoners authorized to be confined therein, pursuant to the last section, and who is responsible for the safe keeping of the persons so committed, in the same manner and to the same extent as if he was Sheriff of the county for whose use his jail is designated, and with respect to the persons so committed he is deemed the Sheriff of the county from which they were removed.

Keeper of jail in contiguous county to receive prisoners.

1605. When a jail is erected in the county for the use of which the designation was made, or its jail is rendered fit and safe for the confinement of prisoners, the County Judge of that county must, by a written revocation, filed with the County Clerk thereof, declare that the necessity for the designation has ceased, and that it is revoked.

When jail in contiguous county to cease to be used.

Prisoners
to be
returned
to proper
county.

1606. The County Clerk must immediately serve a copy of the revocation upon the Sheriff of the county, who must thereupon remove the prisoners to the jail of the county from which the removal was had.

Prisoners
may be
removed in
case of fire.

1607. When a County Jail or a building contiguous to it is on fire, and there is reason to apprehend that the prisoners may be injured or endangered, the Sheriff or Jailer must remove them to a safe and convenient place, and there confine them as long as it may be necessary to avoid the danger.

Prisoners
may be
removed in
case of
pestilence.

1608. When a pestilence or contagious disease breaks out in or near a jail, and the physician thereof certifies that it is liable to endanger the health of the prisoners, the County Judge may, by a written appointment, designate a safe and convenient place in the county, or the jail in a contiguous county, as the place of their confinement. The appointment must be filed in the office of the County Clerk, and authorize the Sheriff to remove the prisoners to the place or jail designated, and there confine them until they can be safely returned to the jail from which they were taken.

Papers
served on
Jailer for
prisoner.

1609. A Sheriff or Jailer upon whom a paper in a judicial proceeding, directed to a prisoner in his custody, is served, must forthwith deliver it to the prisoner, with a note thereon of the time of its service. For a neglect to do so he is liable to the prisoner for all damages occasioned thereby.

Guard for
jail.

1610. The Sheriff, when necessary, may, with the assent in writing of the County Judge, or in a city, of the Mayor thereof, employ a temporary guard for the protection of the County Jail, or for the safe keeping of prisoners, the expenses of which are a county charge.

1611. The Sheriff must receive all persons committed to jail by competent authority, and provide them with necessary food, clothing, and bedding, for which he shall be allowed a reasonable compensation, to be determined by the Board of Supervisors, and, except as provided in the next section, to be paid out of the County Treasury.

Sheriff to receive all persons duly committed

1612. Whenever a person is committed upon process in a civil action or proceeding, except when the people of this State are a party thereto, the Sheriff is not bound to receive such person, unless security is given on the part of the party at whose instance the process is issued, by a deposit of money, to meet the expenses for him of necessary food, clothing, and bedding, or to detain such person any longer than these expenses are provided for. This section does not apply to cases where a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of Court.

Prisoners on civil process, when not to be received

1613. Persons confined in the County Jail under a judgment of imprisonment rendered in a criminal action or proceeding, may be required by an order of the Board of Supervisors to perform labor on the public works or ways in the county.

Prisoners may be required to labor.

1614. The Board of Supervisors making such order may prescribe and enforce the rules and regulations under which such labor is to be performed.

Rules and regulations for the performance of labor.

Approved February 14th, 1872.

NEWTON BOOTH,

Governor.

[Being alike applicable to all the Codes, there is here inserted:]

PART V.—POLITICAL CODE.

OF THE DEFINITION AND SOURCES OF LAW—EFFECT
AND PUBLICATION OF THE CODES, AND THE EX-
PRESS REPEAL OF STATUTES.

TITLE I. DEFINITION AND SOURCES OF THE LAW.

II. EFFECT OF THE CODES.

III. PUBLICATION OF THE CODES AND STATUTES
CONTINUED IN FORCE.

IV. EXPRESS REPEAL OF STATUTES.

TITLE I.

DEFINITION AND SOURCES OF THE LAW.

SECTION 4466. Definition of law.

4467. How expressed.

4468. Common law, when rule of decision.

Definition
of law.

4466. Law is a solemn expression of the will of
the supreme power of the State.

How
expressed.

4467. The will of the supreme power is expressed:

1. By the Constitution;
2. By statutes.

Common
law, when
rule of
decision.

4468. The common law of England, so far as it is
not repugnant to or inconsistent with the Constitution
of the United States, or the Constitution or laws of this
State, is the rule of decision in all the Courts of this
State.

TITLE II.

EFFECT OF THE CODES.

SECTION 4478. Construction of the Codes with relation to the laws passed at the present session.

4479. Laws passed at present session prevail.

4480. Construction of Codes with relation to each other.

4481. Conflicts between Titles, which to prevail.

4482. Conflicts between Chapters, which to prevail.

4483. Conflicts between Articles, which to prevail.

4484. Conflicting sections of the same Title, which to prevail.

4478. With relation to the laws passed at the present session of the Legislature, THE POLITICAL CODE, CIVIL CODE, CODE OF CIVIL PROCEDURE, and PENAL CODE, must be construed as though each had been passed on the first day of the present session.

Construction of the Codes with relation to the laws passed at the present session.

4479. If the provisions of any law passed at the present session of the Legislature contravene, or are inconsistent with, the provisions of either of the four Codes, the provisions of such law must prevail.

Laws passed at present session prevail.

4480. With relation to each other, the provisions of the four Codes must be construed (except as in the next two sections provided) as though all of such Codes had been passed at the same moment of time and were parts of the same statute.

Construction of Codes with relation to each other.

4481. If the provisions of any Title conflict with or contravene the provisions of another Title, the provisions of each Title must prevail as to all matters and questions arising out of the subject matter of such Title.

Conflicts between Titles, which to prevail.

4482. If the provisions of any Chapter conflict with or contravene the provisions of another Chapter of the same Title, the provisions of each Chapter must prevail as to all matters and questions arising out of the subject matter of such Chapter.

Conflicts between Chapters, which to prevail.

Conflicts
between
Articles,
which to
prevail.

4483. If the provisions of any Article conflict with or contravene the provisions of another Article of the same Chapter, the provisions of each Article must prevail as to all matters and questions arising out of the subject matter of such Article.

Conflicting
sections of
the same
Title,
which to
prevail.

4484. If conflicting provisions are found in different sections of the same Chapter or Article, the provisions of the sections last in numerical order must prevail, unless such construction is inconsistent with the meaning of such Chapter or Article.

TITLE III.

PUBLICATION OF THE CODES.

SECTION 4494. Codes not published as part of the statutes.

Codes not
published
as part of
the statutes

4494. The Codes passed at this session of the Legislature must not be published as a part of the statutes passed at this session, but provision must be made by law for their publication.

TITLE IV.

EXPRESS REPEAL OF STATUTES.

SECTION 4504. Repeal of repealed statutes not to imply that they were in force.

4505. Express repeal of statutes to be provided for.

Repeal of
repealed
statutes
not to
imply that
they were
in force.

4504. The repeal of any statute or part of a statute heretofore repealed must not be construed as a declaration, express or by implication, that such statute or part of a statute has been in force at any time subsequent to such first repeal.

4505. The express repeal of statutes will be provided for by a separate statute, and such statute after its passage must be construed in the same manner and must have like effect as if it were part of this Code.


Express
repeal of
statutes to
be provided
for.



INDEX.



INDEX.

 The references are to the Sections.

A

ABANDONMENT—	Section.
of child.....	271
ABDUCTION—	
of women.....	265
of females, for purpose of prostitution.....	267
jurisdiction of indictments for.....	784
ABORTION—	
administering drugs to procure miscarriage.....	274
submitting to an attempt to produce miscarriage.....	275
evidence on trial for.....	1108
ACCESSORIES—	
who are.....	32
punishment of.....	33
in a duel.....	228
to a lottery.....	322
to a misdemeanor.....	659
jurisdiction of indictment against.....	791
before the fact, same as principals.....	970
may be indicted, how.....	971
though principal has not been.....	972
ACCOMPLICE—	
evidence of.....	1111
ACCOUNTS—	
falsification of public.....	424
of corporations, fraudulently keeping.....	563
ACCUSATION—	
against officers, to be presented by Grand Jury.....	758
form of.....	759
how transmitted and served.....	760

ACCUSATION— (<i>Continued.</i>)	Section.
prosecuting, if defendant does not appear.....	761
defendant may demur or answer.....	762
form of demurrer to.....	763
manner of denial of.....	764
if demurrer overruled, defendant must answer.....	765
plea of guilty of.....	766
trial of.....	767
parties to, entitled to process for witnesses.....	768
judgment on conviction.....	769
appeal, how taken.....	770
what prosecution must be by.....	889
in what Court found.....	890
ACQUITTAL—	
foreign.....	656
former, in certain cases bar to indictment.....	793
ib.....	794
what is not former.....	1021
what is former.....	1022
effect of, for higher offense.....	1023
defendant discharged or not, on.....	1164
ib.....	1447
ground for.....	1096
ACTION—	
defending in certain cases.....	162
See CRIMINAL ACTION.	
ACTS—	
commission of, prohibited.....	177
made punishable by different provisions.....	654
punishable under foreign law.....	655
establishing Code, to take effect.....	1
how cited.....	24
certain, continued in force.....	23
not retroactive.....	3
enumerated, which are not repealed.....	23
ADJOURNMENT—	
Court may have, while jury is deliberating.....	1142
final, discharges the jury.....	1143
ADULTERY—	
what and how punished, note to.....	266
ADULTERATION—	
of food, drugs, liquors, etc.....	382
ADVERTISEMENT—	
of indecent publications.....	311
of lottery.....	323
See PUBLICATION.	

AFFIDAVIT—	Section.
voluntary.....	151
ib.....	152
entitling.....	1401
ib.....	1460
ib.....	1563
for change of venue.....	1034
for examination on commission.....	1352
AFFIRMATION—See OATH.	
ALAMEDA COUNTY—	
Act to protect game and fish in, continued in force, Subdivision 11..	23
AMUSEMENTS—	
certain, prohibited on Sunday.....	299
AMUSEMENTS, PLACES OF—See THEATERS.	
ANIMALS—	
putting dead in streets, etc.....	374
poisoning.....	506
killing, maiming, etc.....	597
preventing cruelty, Acts continued in force, Subdivision 4.....	23
ANSWER—	
to articles of impeachment.....	743
to arraignment.....	990
See PLEA.	
APOTHECARY—	
omitting to or wrongfully labeling drugs.....	380
APPEAL—	
how taken on judgment of removal from office.....	770
who may take.....	1235
parties, how designated on.....	1236
when may be taken by defendant.....	1237
when may be taken by the people.....	1238
when taken.....	1239
ib.....	1466
how taken.....	1240
ib.....	1467
notice of, how served.....	1241
effect of, by the people.....	1242
effect of, by defendant.....	1243
duty of clerks upon.....	1246
certificate of appellate Court to be filed.....	1243
duty of Sheriff thereon.....	1244
to restore the defendant.....	1245
dismissal of, for irregularity.....	1248
dismissal of, for want of return.....	1249
when to be heard and determined.....	1252

APPEAL— (<i>Continued.</i>)	Section.
argument of.....	1253
number of counsel to be heard on.....	1254
appearance of defendant not necessary on.....	1255
judgment on.....	1258
what may be reviewed on.....	1259
power of appellate Court on.....	1260
where new trial to be had on.....	1261
ib.....	1469
statement on.....	1468
proceedings, if dismissed.....	1470
bail on.....	1291
qualifications and how put in.....	1292
 APPEARANCE—	
of defendant on impeachment.....	742
of defendant to answer accusation.....	761
of defendant for arraignment.....	977
of defendant on trial.....	1043
of defendant when jury renders verdict.....	1148
of defendant on appeal not required.....	1255
of corporations to answer charges.....	1396
 APPELLATE COURT—	
presence of defendant not required in.....	1255
judgment of.....	1258
ib.....	1260
judgment of, how entered and remitted.....	1264
when jurisdiction of, ceases.....	1265
 APPOINTMENT—	
buying, to office.....	73
receiving reward for.....	74
 APPRENTICES—	
aiding to desert, and harboring.....	646
 AQUEDUCTS—	
destroying or injuring.....	607
 ARBITRATOR—	
improper attempts to influence.....	95
misconduct of.....	96
 ARGUMENT—	
to jury.....	1095
of appeal.....	1252
 ARMS—	
having unlawful possession of.....	442
selling State.....	443

ARSON—	Section.
defined	447
ownership of the building.....	452
degrees of.....	453
ib	454
punishment of	455
"burning" defined.....	451

ARRAIGNMENT—	
of defendant, when indictment filed.....	976
defendant, when to be present at.....	977
if in custody, must be produced	978
if discharged, bench warrant to issue.....	979
must be informed of his rights on	987
how made	988
proceedings on, in certain case.....	989
time allowed, and how defendant may answer.....	990
for judgment	1200

ARREST—	
officers refusing to make.....	142
making without lawful authority.....	146
refusing to aid officer in making.....	150
defined	834
how made and what restraint allowed.....	835
by peace officers.....	836
by private persons	837
magistrates may order	838
persons making, may summon aid	839
when may be made.....	840
how made	841
if made on warrant, it must be shown.....	842
what force may be used	843
doors and windows may be broken	844
ib	845
weapons may be taken from person arrested.....	846
duty of private person making.....	847
duty of officer making, with warrant.....	848
when made with warrant.....	849
of defendant, after judgment.....	1199
of fugitives from justice.....	1550
by telegraph.....	850
certified copy served by.....	851

See WARRANT OF ARREST.

ARREST OF JUDGMENT—	
motion in, defined and when made.....	1185
ib	1450
Court may cause, without motion	1186
effect of	1187
grounds of motion in, in Justice's Court.....	1452

ASSAULT—	Section.
by public officer under color of authority.....	149
with intent to kill.....	217
with intent to commit rape, robbery, etc.....	220
with intent to commit other felonies.....	221
by administering drugs.....	222
defined.....	240
punishment of.....	241
with caustic chemicals.....	244
with deadly weapons.....	245
having deadly weapons with intent to.....	467
in presence of Court.....	710
ASSEMBLY—See MEETINGS; UNLAWFUL ASSEMBLY.	
ASSESSMENT—	
false statement as to.....	430
ASSESSOR—	
refusing to give list of property to.....	429
ATTEMPT—	
to commit crimes, when punishable.....	663
ib.....	665
to commit crimes, how punishable.....	664
ib.....	665
ATTEMPTS TO KILL—	
by poison.....	216
by assault with deadly weapon.....	217
ATTENDANCE—	
of witnesses may be compelled.....	1326
ib.....	1330
ib.....	1518
ATTORNEY—	
misconduct by....	160
buying demands in suit.....	161
defending certain prosecutions.....	162
may defend himself.....	163
See COUNSEL.	
AUCTIONEER—	
unlawfully acting as.....	436
AUCTIONS—	
mock.....	535
AUTHOR—See PUBLISHER.	

B

BAIL—	
admission to, on charge of misdemeanor.....	822
proceedings on taking.....	823

BAIL— (<i>Continued.</i>)	Section.
when not given.....	824
admission to.....	829
ib.....	1458
ib.....	862
certificate of, taken.....	874
order for, on commitment.....	875
order for, to be indorsed.....	982
proceedings on giving, in another county.....	984
when may be increased.....	985
defendant on, when appears for trial, may be committed.....	1129
admission to, defined.....	1268
taking of.....	1269
offenses not bailable.....	1270
when allowed before conviction.....	1271
when allowed, pending appeal.....	1272
nature of and for what purposes.....	1273
before conviction.....	1273
after conviction.....	1273
when matter of discretion, what notice to be given.....	1274
what magistrates may admit to.....	1277
how put in and form of undertaking.....	1278
ib.....	1287
qualifications of.....	1279
ib.....	1288
ib.....	1317
how to justify.....	1280
on allowance of, defendant to be discharged.....	1281
when offense is capital.....	1284
when offense is not capital.....	1285
on habeas corpus.....	1286
form of undertaking, on habeas corpus.....	1287
on appeal.....	1291
ib.....	1292
deposit instead of.....	1295
ib.....	1296
ib.....	1297
may surrender defendant.....	1300
on order for recommitment, by whom taken.....	1315
form of undertaking.....	1316
when exonerated.....	1371
writ for the purpose of taking.....	1490
Judge may take.....	1491
admitting fugitives from justice to.....	1552
See SECURITY.	
 BALLAST—	
throwing overboard in harbors, etc.....	613

BALLOTS—	Section.
altering, changing, destroying, etc.....	45
ib.....	48
See ELECTION.	
BALLOT BOX—See ELECTION.	
BARRATRY—	
defined.....	158
what proof required.....	159
BATTERY—	
defined.....	242
punishment of.....	243
BAWDY HOUSE—	
keeping or residing in.....	315
See ILL-FAME.	
BEACONS—	
removing.....	609
mooring vessels to.....	614
BENCH WARRANT—	
when must issue.....	983
ib.....	979
by whom and how issued.....	984
ib.....	980
form of.....	985
ib.....	981
service of.....	986
ib.....	983
direction in, if offense is bailable.....	982
when must issue after judgment.....	1196
form of.....	1197
service of.....	1198
BETTING—	
on elections.....	60
BIAS—	
of officer summoning jury.....	1064
ground of challenge for implied.....	1074
trial for actual.....	1084
BIGAMY—	
defined.....	281
ib.....	282
punishment of.....	283
jurisdiction of indictment for.....	785
evidence on trial for.....	1106

BILL—	Section.
making or uttering fictitious.....	476
presenting false, to public officer for payment.....	72
altering draft of, in Legislature.....	83
altering enrolled copy of.....	84
BILL OF EXCEPTIONS—	
in what cases may be taken.....	1170
when to be settled and signed.....	1171
what to contain.....	1175
See EXCEPTIONS.	
BILL OF LADING—	
destroying.....	355
making false.....	541
issuing fictitious.....	577
erroneous, issued in good faith.....	579
issued by warehouse, must be canceled, when.....	582
BIRDS—	
killing, trapping, etc., in cemeteries.....	598
killing mocking birds, Act of 1872, note to.....	626
See GAME LAWS, from Section 626 to.....	627
See GAME.	
BIRTH OF CHILD—	
fraudulent pretenses as to.....	156
BONDS—	
forgery of.....	470
See SECURITY; BAIL.	
BOOKS—	
obscene, etc., rom Section 311 to.....	316
See PUBLICATION.	
BRANDS—	
altering or defacing.....	357
BRIBERY—	
of members of legislative caucuses.....	57
of executive officers.....	67
of members of the Legislature.....	85
ib.....	86
of jurors, judicial officers, referees, etc.....	92
of witnesses.....	137
ib.....	138
of certain officers.....	165
of telegraph operator.....	641
BRIBES—	
defined.....	7
asking or receiving.....	68

BRIDGE—	Section.
maintaining, unlawfully.....	385
fast riding or driving on.....	388
crossing toll, without paying.....	389
injury to railroad.....	587
injury to other.....	588
burning.....	600
destroying or injuring.....	607
BUGGERY—See CRIME AGAINST NATURE.	
BUILDING—	
letting, for lottery purposes.....	326
defined	448
“inhabited,” defined.....	449
ownership of, in case of arson.....	452
burning, not subject of arson.....	600
using gunpowder in destroying or injuring.....	601
BUOYS—	
removing.....	609
mooring vessels to.....	614
BURDEN OF PROOF—	
when, shifts on trial for murder.....	1105
BURGLARY—	
defined	459
punishment of.....	460
having burglars' tools with intent to commit.....	466
jurisdiction of indictment for, in certain cases.....	786
BURGLARS' TOOLS—	
having, in possession.....	466
BURIAL—See DEAD BODY.	
BURNING—	
defined.....	451
building not subject of arson.....	600
bridge	600
BUYING DEMANDS—	
in suit, by attorney	161

C

CALENDAR—	
to be prepared by Clerk of Court.....	1047
order of, disposing of issues on.....	1048
CAMP MEETING—	
selling liquors at.....	304
ib	305

CARNAL—	Section.
abuse of children.....	267
CARRIERS—	
refusing to receive passengers.....	365
CARS—	
running freight, before passenger.....	392
See RAILROADS.	
CASKS—	
refilling, bearing trade marks.....	354
CEMETERIES—	
defacing tombs, etc., in.....	296
killing birds in.....	598
CERTIFICATE—	
given falsely by public officers.....	167
of magistrates, on depositions.....	1394
CHALLENGE—	
Grand Juror acting after it has been allowed.....	164
to panel or individual Grand Juror.....	894
cause of, to panel of Grand Jury.....	895
cause of, to Grand Juror.....	896
manner of taking and trying.....	897
decision upon.....	898
effect of allowing, to Grand Jury panel.....	899
effect of allowing, to Grand Juror.....	900
objections to Grand Jury can only be taken by.....	901
definition and division of.....	1055
defendants must join in.....	1056
to panel defined.....	1058
to panel, upon what founded.....	1059
to panel, when and how taken.....	1060
if sufficiency of, denied, adverse party may except.....	1061
if overruled, Court may allow denial.....	1062
denial of, how made and trial of.....	1063
who may be examined on trial of.....	1063
for bias, when jury is summoned but not drawn.....	1064
if allowed, jury to be discharged.....	1065
defendant to be informed of his right to.....	1066
to individual jurors, kinds of.....	1067
when taken.....	1068
peremptory, what and how taken.....	1069
number of peremptory, allowed.....	1070
for cause, definition and kinds of.....	1071
general causes of.....	1072
particular causes of.....	1073
for implied bias, ground of.....	1074
exemption not a ground of.....	1075
causes of, how stated.....	1076

CHALLENGE— (<i>Continued.</i>)	Section.
how tried.....	1078
triers of, how appointed.....	1079
oath of triers of.....	1080
rules of evidence on trials of.....	1082
for implied bias, how determined.....	1083
for actual bias, instructions to triers of.....	1084
verdict of triers of, and its effect.....	1085
first by defendant and then by the people.....	1086
order of.....	1087
peremptory, may be taken, when.....	1088
minutes of, to be entered in judgment.....	1207
CHALLENGE— See DUEL; PRIZE FIGHT.	
CHAMPERTY— See BUYING DEMANDS.	
CHANGE OF VENUE— See VENUE.	
CHARGE—	
of Court to Grand Jury.....	905
of Court to trial jury.....	1127
of Court to jury on trial of question of insanity.....	1369
overcharge by railroad officer.....	525
CHEAT—	
conspiracy to.....	182
offenses by a cheat, from Section 528 to.....	535
CHECK—	
forgery of.....	470
making or uttering fictitious.....	476
CHILD—	
incapable of committing crime.....	26
false pretenses as to birth of.....	156
substituting one, for another.....	157
omitting to provide with necessities.....	270
deserting.....	784
carnal abuse of.....	267
selling drinks to, note to.....	307
CHILD STEALING—	
penalty for.....	278
jurisdiction of indictment for.....	784
CHINESE—	
bringing into the State.....	174
ill-fame, houses of, Acts continued in force, Subdivision 7.....	23
CITIES AND COUNTIES—	
consolidating Acts continued, Subdivision 2.....	23
CIVIL DEATH—	
of convict.....	673

CIVIL REMEDIES—	Section.
preserved	9
CIVIL RIGHTS—	
of convict suspended.....	673
limitation on same	674
CLERKS—	
embezzlement by.....	506
to prepare calendar of issues.....	1047
to record with judgment what.....	1207
duty of, on appeal.....	1244
of State Prison, duty of.....	1578
CODE—	
when takes effect.....	2
not retroactive	3
construction of.....	4
effect of, on past offenses.....	5
ib	6
same construed, Section 4478 to	4484
Political, Part 5, Section 4466 to	4505
publication of.....	4494
CO-DEFENDANTS—	
must unite in challenge.....	1056
as witnesses.....	1099
COIN—	
counterfeiting.....	477
possessing or receiving counterfeit.....	479
COLLISIONS—	
death from.....	368
COMMISSION—	
examination of witnesses on.....	1349
defined.....	1351
directions as to return of.....	1356
how executed.....	1357
how returned.....	1358
ib	1359
when and how filed.....	1360
to be open for inspection.....	1361
COMMITMENT—	
on postponement of examination.....	862
form of.....	863
ib	877
when and how made.....	872
order for.....	873
order for bail on.....	875
how made and to whom delivered.....	876

COMMITMENT— * (Continued.)	Section.
to asylum, when insane.....	1370
of fugitives from justice.....	1550
ib	1551
COMMON BARRATRY— See BARRATRY.	
COMMON CARRIERS— See CARRIERS.	
COMMON LAW—	
rule of strict construction not applicable.....	4
COMMUNICATION—	
privileged.....	256
unauthorized, with convicts.....	171
COMMUTATION OF SENTENCE—	
power of Governor to grant.....	1417
prisoners may earn.....	1590
ib	1591
See CREDITS.	
COMPLAINANT—	
of threatened offense must be examined.....	702
on application for search warrant.....	1526
COMPLAINT—	
before magistrate.....	701
before Justice's and Police Court.....	1426
See ACCUSATION.	
COMPOUNDING CRIMES—	
penalty for.....	153
COMPROMISE—	
of certain offenses, may be made.....	1377
ib	1379
to be by permission of the Court.....	1378
order thereon bar to another prosecution.....	1378
COMPULSION— See DURESS.	
CONDUCT OF JURY—	
after cause submitted, from Section 1135 to.....	1143
CONSCIENCE—	
crimes against, from Section 299 to.....	307
CONSPIRACY—	
criminal, defined and punished.....	182
none other punishable criminally.....	183
overt act, when necessary	184
evidence on trial for.....	1104

CONSTABLE—	Section.
purchasing judgment.....	97
suffering prisoner to escape.....	108
refusing to arrest or receive accused parties.....	142
See PEACE OFFICER.	
CONSTRUCTION—	
of Code.....	4
of terms used in this Code.....	7
See RULE , etc, Section 4478 to.....	4484
of Act establishing this Code.....	24
CONTEMPT—	
when criminal.....	166
how punishable.....	657
Courts of justice to punish for.....	12
CONTINUANCE— See POSTPONEMENT.	
CONTROLLER—	
violating State Board of Examiners' laws.....	441
keeping false accounts, etc.....	424
CONVEYANCES—	
forgery of.....	470
fraudulent	531
CONVICT—	
unauthorized communication with.....	171
importing foreign.....	173
civil rights of, suspended.....	673
person of, protected.....	676
may earn commutation of sentence.....	1590
ib.....	1591
civil death of.....	674
limitation on.....	675
forfeitures by	677
when term of imprisonment commences	670
imprisoned for life.....	671
fine may be added.....	672
when insane.....	1221
ib.....	1224
when enceinte	1225
ib.....	1226
transportation to State Prison	1586
CONVICTION—	
foreign	656
foreign, for former offense	668
no person to be punished except on legal.....	681
how obtained	689
on impeachment	746

CONVICTION— (<i>Continued.</i>)	Section.
of public officers, of accusations.....	769
autrefois, in certain case, bar to indictment.....	793
ib.....	794
of higher offense, effect of.....	1023
when doubt exists as to degree.....	1097
on uncorroborated testimony of accomplice.....	1111
of lesser offense, or attempt.....	1158
proceedings upon general verdict of.....	1165
ib.....	1445
proof of autrefois in mitigation, etc., of punishment.....	1204
of corporations.....	1397
previous, how pleaded.....	696
previous, to be found in verdict.....	1158
 CORONER—	
duties of.....	1510
ib.....	1517
 CORONER'S INQUEST—	
proceedings on.....	1510
jurors to be sworn.....	1511
witnesses to be summoned.....	1512
witnesses compelled to attend.....	1513
verdict of jury.....	1514
testimony in writing, where filed.....	1515
exceptions.....	1516
Coroner to issue warrants.....	1517
form of warrant.....	1518
warrant, how served.....	1519
 CORONER'S JURY—SEE CORONER'S INQUEST; JURY.	
 CORPORATIONS—	
bribing Trustees of.....	165
frauds in subscription of stock of.....	557
frauds in organization or increasing capital.....	558
unauthorized use of names in prospectus.....	559
misconduct of Directors of stock.....	560
officer of savings bank overdrawing account.....	561
frauds in keeping accounts.....	563
publishing false reports of condition.....	564
must permit inspection of books.....	565
railway, contracting debt beyond its means.....	566
debt so contracted not invalid.....	567
Director of, presumed to know its condition.....	568
Director of, when at meeting, when presumed to assent.....	569
Director of, when absent, when presumed to assent.....	570
foreign.....	571
director of, defined.....	572
proceedings against.....	1390

CORPORATIONS— (<i>Continued.</i>)	Section.
summons on.....	1390
form of summons.....	1391
summons, when and how served on.....	1392
examination of charge against.....	1393
appearance and plea.....	1396
fine on conviction, how collected.....	1397
Acts for organization, not repealed but continued in force, Subdi- vision 1.....	23
CORPSE— See DEAD BODY.	
CORRUPTLY—	
defined.....	7
COSTS—	
order for prosecutor to pay.....	1447
when prosecutor to pay.....	1448
COUNSEL—	
right of defendant as regards.....	858
ib.....	859
number of, to argue to jury.....	1095
number of, to argue on appeal.....	1254
See ATTORNEY.	
COUNTERFEITING—	
coin, bullion, etc.....	477
punishment of.....	478
possessing or receiving counterfeit coin.....	479
making or possessing dies or plates for.....	480
trade marks.....	350
quicksilver stamps.....	366
COUNTY COURT—	
appeals to.....	1466
See COURT; APPELLATE COURT.	
COUNTY JAILS—	
by whom kept and for what used.....	1597
rooms required in.....	1598
prisoners to be classified in.....	1599
Sheriff to receive United States prisoners.....	1601
Keeper of, answerable for keeping United States prisoners.....	1602
prisoners committed must be confined.....	1600
of contiguous county, when may be used.....	1603
of contiguous county, when to cease to be used.....	1605
prisoners to be returned to proper county.....	1606
prisoners may be removed in case of fire or pestilence.....	1607
ib.....	1608
guard for.....	1610
Sheriff to receive all persons duly committed.....	1611

COUNTY JAILS— (<i>Continued.</i>)	Section.
prisoners, when not to be received.....	1612
prisoners in, required to labor.....	1613
rules and regulations therefor.....	1614
See JAILER; JAILS; KEEPER; SHERIFF.	
COUNTY JUDGE—	
indictment against, where transmitted.....	1029
See MAGISTRATE.	
COURT—	
criminal contempt of.....	166
assault in presence of.....	710
charge of, to Grand Jury.....	905
authority of, on removal of action.....	1088
when has not jurisdiction, may discharge jury.....	1113
proceedings in such cases.....	1113
ib.....	1114
to decide questions of law.....	1124
ib.....	1126
charge of, to jury.....	1127
may adjourn from time to time when jury is out.....	1142
when may order reconsideration of verdict.....	1160
may arrest judgment without motion.....	1186
when to determine degree of crime.....	1192
may make summary inquiry for mitigation, etc., of punishment...	1203
charge of, to jury, on trial; insanity.....	1369
when may order dismissal of action.....	1382
ib.....	1384
See APPELLATE COURT; COUNTY COURT; JUSTICE'S COURT; POLICE COURT.	
COURTS-MARTIAL—	
authority of, preserved.....	11
CREDITORS—	
attempting to defraud.....	154
CREDITS—	
for good behavior of prisoners, allowed.....	1590
ib.....	1591
how forfeited.....	1591
See COMMUTATION OF SENTENCE.	
CRIME AGAINST NATURE—	
assault with intent to commit.....	220
punishment of.....	286
penetration sufficient to complete.....	287
CRIMES—	
defined.....	15
how divided.....	16
must be unity of act and intent.....	20

CRIMES— (<i>Continued.</i>)	Section.
who are capable of committing	28
compounding.....	153
conspiracy to commit.....	182
attempts to commit.....	663
ib.....	664
ib.....	665
no one punishable for, except on conviction.....	681
how prosecuted.....	682
restraint allowed of person charged with.....	688
lawful resistance to commission of.....	692
ib.....	693
ib.....	694
prevention of.....	697
jurisdiction of, committed in the State.....	777
jurisdiction of, commenced out of, and completed in the State.....	778
jurisdiction of, committed partly in two counties.....	781
jurisdiction of, committed on boundary line, etc.....	782
jurisdiction of, committed on a vessel.....	783
jury to find degree of.....	1157
certain, may be compromised.....	1377

See FELONY; MISDEMEANOR.

CRIMINAL ACTION—

defined.....	683
how prosecuted	684
party prosecuted, how known.....	685
rights of defendant in.....	686
no person to be a witness against himself.....	688
limitation of.....	799
ib	800
ib	801
ib	802
removal of, before trial.....	1033
application for removal of	1034
application for removal of, when granted.....	1035
rules of evidence in	1102
who may be witnesses in.....	1320
ib	1321
ib	1322
ib	1323
dismissal of.....	1382

See TRIAL.

CROPS—

injuries to standing.....	604
---------------------------	-----

D

DAMS—	Section.
injuring or destroying.....	607
DEAD BODY—	
unlawful mutilation or removal of.....	290
unlawful removal of, for dissection.....	291
who are charged with burying.....	292
punishment for omitting to bury.....	293
who is entitled to custody of.....	294
arresting or attaching.....	295
DEADLY WEAPONS—	
exhibiting in a rude manner.....	417
having in possession with intent to assault.....	467
may be taken from person arrested.....	846
See ASSAULT.	
DEATH—	
of party injured in murder	194
warrant of execution on judgment of.....	1217
duties of Judges on passing sentence of	1218
duty of Governor on receiving copy of judgment of.....	1219
sentence, when suspended.....	1220
sentence in force but not executed.....	1227
punishment of, how inflicted	1228
punishment, when to take place and who present at.....	1229
from explosion.....	368
from collision.....	369
from mischievous animal.....	399
civil, of convict	674
judgment of, suspended only by order of Supreme Court or a Judge thereof.....	1243
when convict insane, Section 1221 to.....	1224
when convict "enceinte".....	1225
ib	1226
DEATH WARRANT—	
on judgment of death	1217
return upon, after execution.....	1230
DEBT—	
certain, illegally contracted, not invalid.....	567
evidence of, subject of embezzlement	510
DEBTOR—	
fraudulently concealing his property.....	154
DECEIVING—	
witness	133
DEFECTS—	
in indictments	960
in form of writ of habeas corpus	1496

DEFENDANT—**Section.**

fraudulently concealing his property	155
party prosecuted known as	685
rights of, in criminal action.....	686
not to be unnecessarily restrained before conviction.....	688
not to be witness against himself	688
ON IMPEACHMENT—	
service on, on impeachment trial.....	740
ib	741
proceedings against, on failure to appear	742
may, after appearance, answer or demur	743
if demurrer overruled, must answer.....	744
ON TRIALS FOR REMOVAL FROM OFFICE—	
service on.....	760
failing to appear, proceedings against	761
may demur or deny the accusation.....	762
form of objection.....	763
manner of denial.....	764
if objections overruled, must answer.....	765
proceedings, if pleads guilty, refuses to answer, or denies.....	766
IN CRIMINAL ACTIONS—	
on arrest, must be taken before what magistrate	821
ib	822
ib	824
admission to bail.....	822
ib	829
ib	862
must be taken before magistrate immediately.....	825
where is taken before another magistrate	826
must be informed of charge and his rights	858
must be allowed time to procure counsel	859
examination of, when to proceed	860
when to be committed for examination or discharged on bail.....	862
deposition must be read to	863
witnesses must be examined in presence of	865
may produce witnesses.....	866
when and how discharged	871
when and how to be committed	872
when indictment is found and he not in custody.....	945
name of, in indictment	953
must be arraigned, where?.....	976
presence at arraignment	977
must be allowed time to answer.....	990
may show all facts tending to defense	1020
refusing to plead	1024
presence of, when necessary on trial.....	1043
entitled to two days to prepare for trial.....	1049
when there are several, they cannot sever in challenging.....	1056
must be informed of his right to challenge	1066

DEFENDANT (IN CRIMINAL ACTIONS)— (Continued.)		Section.
presumption of innocence of.....		1096
reasonable doubt as to guilt of.....		1096
ib		1097
discharging one of several, before verdict, for witness.....		1099
ib		1100
on bail, appears for trial, may be committed.....		1129
presence of, on rendering verdict.....		1148
verdict as to some, and another trial to others		1159
when to be discharged or not, on verdict of acquittal.....		1164
when to be held or discharged.....		1188
presence of, at judgment		1193
how brought before Court for judgment.....		1194
ib		1195
arrest of.....		1199
arraignment for judgment.....		1200
may show cause why judgment not pronounced.....		1201
in what cases may appeal.....		1237
presence of, not necessary on appeal.....		1255
when to be discharged on reversal of judgment.....		1262
surrender of, by bail.....		1300
by whom arrested for purpose of surrender.....		1301
when is not competent witness.....		1323
right of, to conditional examination of witnesses.....		1336
ib		1337
right of, to examination of witnesses on commission.....		1349
ib		1350
must be discharged, if action discharged.....		1384
when may be searched in presence of magistrate.....		1542
DEFINITIONS—		
of terms employed in the Code.....		7
crime and offense.....		15
felony and misdemeanor.....		17
of law.....		4466
DEGREE OF CRIME—		
reasonable doubt as to.....		1097
jury to find.....		1157
Court to determine, upon plea of guilty.....		1192
DEMURRER—		
to articles of impeachment.....		743
if to impeachment, overruled, must answer.....		744
to accusation against officers.....		762
ib		763
pleading on part of defendant.....		1002
to indictment, when put in.....		1003
grounds of.....		1004
how put in, and its form.....		1005
when heard.....		1006

DEMURRER— (<i>Continued.</i>)	Section.
judgment on.....	1007
when allowed, bar to another prosecution.....	1008
resubmission of case to Grand Jury after.....	1009
if disallowed.....	1011
when grounds of, must or may be taken.....	1012
DENIAL—	
of accusation.....	762
form of.....	763
manner of.....	764
DEPOSIT—	
officer receiving, in insolvent bank.....	562
instead of bail, when and how made.....	1295
ib.....	1296
how to be applied.....	1297
when forfeited, how disposed of.....	1306
DEPOSITION—	
when deemed complete.....	124
of informers of threatened offense.....	702
of complainant.....	811
such must contain what.....	812
must be read to defendant on examination.....	864
by whom and how kept.....	870
to be returned to Court.....	883
ib.....	941
of witnesses, on conditional examination.....	1343
such to be transmitted to Clerk.....	1344
when may be read in evidence.....	1345
ib.....	1362
of charges against corporations.....	1394
for search warrant, to contain what.....	1527
such to be returned to County Court.....	1541
DESERTION— See ABANDONMENT; SEAMEN.	
DETAINDER—	
unlawful.....	418
DIES—	
making or possessing, for counterfeiting.....	480
DIRECTOR—	
of corporations, defined.....	572
See CORPORATIONS.	
DISCHARGE—	
of one of several defendants, for witness.....	1099
ib.....	1100
effect of such.....	1101
of jury in certain cases.....	1113
ib.....	1139

DISCHARGE— (<i>Continued.</i>)	Section.
of jury in certain cases.....	1140
ib	1141
ib	1143
of defendant.....	862
ib	871
ib	1164
ib	1188
ib	1262
ib	1384
ib	1487
ib	1488
of fugitives from justice.....	1555
DISEASE—	
public exposure of persons afflicted with contagious.....	394
DISMISSAL—	
of charge by Grand Jury, effect of.....	942
of an appeal.....	1248
ib	1249
of action, when may occur	1382
of action in misdemeanor, bar to another prosecution.....	1387
DISORDERLY HOUSE—	
keeping.....	316
DISPERSAL—	
of unlawful assembly.....	409
ib	410
DISPOSAL—	
of property stolen or embezzled, Section 1407 to.....	1413
of fines and forfeitures.....	1307
ib	1570
of issues on calendar.....	1048
DISTRICT ATTORNEY—	
disclosing fact of indictment found.....	168
proceedings for removal of.....	771
if fails to attend Court, it may appoint.....	1130
duty of, on an inquisition.....	1222
dismissal of action on application of.....	1385
duty of, when fugitive from justice arrested.....	1554
DISTURBANCE—	
of religious meetings.....	302
of lawful meetings.....	59
of certain public meetings.....	403
of Legislature	82
of Court.....	710
of the peace at night	415

DOCUMENTS—See WRITTEN INSTRUMENT. Section.

DOCKET—

of Justice and Police Court, how kept 1428

DOGS—

when considered as property..... 491
See ANIMALS.

DOUBT—

as to guilt of defendant..... 1096
as to degree of crime..... 1097

DRUGGIST—See APOTHECARY.

DRUGS—

administering stupefying, with evil intent..... 222
apothecary omitting to or wrongfully labeling..... 380
adulterating 382

DRUNKENNESS—See INTOXICATION.

DUEL—

defined 225
punishment for fighting, with fatal result..... 226
punishment for fighting, without fatal result..... 227
persons fighting disqualified from holding office..... 228
posting for not fighting..... 229
duty of officers to prevent 230
leaving State to evade laws against 231
witnesses to..... 232
 ib 780
in certain case, jurisdiction of indictment for..... 779

DURESS—

when a defense for crime committed 26

E

EDITORS—

liability of, for libel..... 253

EEL RIVER—

Act to regulate fisheries in, continued in force. Subd.12..... 23

ELECTION—

violation of laws of, by officers..... 41
false registration 42
refusal to be sworn by or to answer Judges of..... 43
illegal voting at 45
 ib 46
procuring illegal votes at..... 47
misconduct by Inspectors of..... 49
changing or altering ballots or returns by officers of..... 48

ELECTION— (<i>Continued.</i>)	Section.
forging or altering returns.....	50
adding to or subtracting from votes given at.....	51
accessories to violation of laws of.....	52
intimidating and corrupting electors.....	53
unlawfully furnishing money for.....	54
offers to procure offices for electors.....	55
communicating such offer.....	56
betting on.....	60
violating any provision.....	61
ELECTIVE FRANCHISE—	
crimes against, Section 41 to.....	61
ELECTORS—	
preventing, from attending meetings.....	58
intimidating and corrupting.....	53
offering to procure offices for.....	55
EMBANKMENTS—	
injuring or destroying.....	607
EMBEZZLEMENT—	
of accounts by public officer.....	424
defined.....	503
when officer of association guilty of.....	504
when carrier guilty of.....	505
when trustee, banker, etc., guilty of.....	506
when bailee, tenant, or lodger guilty of.....	507
when clerk, agent, or servant guilty of.....	508
distinct act of taking not necessary.....	509
evidence of debt subject of.....	510
claim of title ground for defense.....	511
intent to restore property no defense.....	512
actual restoration ground for mitigation of punishment.....	513
punishment of.....	514
jurisdiction of indictment for, in certain case.....	786
pleading in an indictment for.....	967
EMBRACERY—	
punishment of.....	92
ib.....	95
ERROR—	
in indictment, does not invalidate.....	960
in pleading.....	1404
ESCAPE—	
of prisoner from State Prison.....	105
attempt to.....	106
from other than a State Prison.....	107
officers suffering convicts to.....	108
assisting prisoner to.....	109

ESCAPE— (<i>Continued.</i>)	Section.
carrying into prison implements for aiding.....	110
recapture of person arrested, having made.....	854
doors and windows may be broken, when.....	855
jurisdiction of indictment for	787
EVIDENCE—	
offering false.....	132
preparing false.....	134
destroying	135
what receivable before Grand Jury.....	919
Grand Jury not bound to hear certain.....	920
degree of, to warrant indictment.....	921
what may be introduced to sustain plea of not guilty.....	1020
rules of, on trial of challenge	1062
rules of, in criminal actions.....	1102
on trial for treason	1103
on trial for conspiracy.....	1104
on trial for bigamy.....	1106
on trial for forgery.....	1107
on trial for abortion and seduction.....	1108
on trial for selling, etc., lottery tickets.....	1109
of false pretenses.....	1110
if, shows higher offense, proceedings thereon.....	1112
when closed on either side, Court may advise acquittal.....	1118
depositions of witnesses, when admitted as.....	1345
EXAMINATION—	
OF CHARGE—	
when to proceed.....	860
when completed.....	861
postponement of.....	862
commitment for.....	863
depositions of complainant and witnesses to be read on.....	864
defendant entitled to produce witnesses.....	866
who may be present at	868
testimony, how taken and authenticated.....	869
OF WITNESSES CONDITIONALLY—	
defendant's right to	1335
in what cases order for may be applied for.....	1336
application for, how made.....	1337
application for, to whom made.....	1338
order for, when granted and what to contain.....	1339
must proceed, when.....	1340
when must not proceed.....	1341
depositions of witness to be transmitted.....	1344
ON COMMISSION—	
of witnesses residing out of the State.....	1349
order for, when and by whom may be applied for.....	1350
commission defined.....	1351

EXAMINATION (ON COMMISSION)— (<i>Continued.</i>)	Section.
application for such order, how made	1352
application, to whom made.....	1353
order for, when granted.....	1354
interrogatories, how settled and allowed.....	1355
See COMMISSION.	
EXAMINERS, STATE BOARD—	
member of, violating laws relating to	441
EXCEPTIONS—	
to challenge, and denial of.....	1077
not taken on trial, but which may be taken by both.....	1172
not taken on trial, but which may be taken by defendant.....	1173
such, when and how settled.....	1174
need not be taken to written charges.....	1176
See BILL OF EXCEPTIONS.	
EXECUTION—	
procuring, of innocent persons.....	128
OF JUDGMENT—	
authority for.....	1213
of fine.....	1214
of fine and imprisonment.....	1215
of death	1217
suspension of capital.....	1220
suspended on appeal by order of Supreme Court or Judge only....	1243
if insane, not executed.....	1224
if “enceinte,” proceedings, Sec. 1225 to.....	1226
certificate of appeal stays execution, when filed.....	1243
duty of Sheriff under.....	1244
to restore defendant.....	1245
of death sentence, how completed.....	1228
of death sentence, where to take place, etc.....	1229
EXECUTIVE, POWER OF THE STATE—	
all offenses against, enumerated, from Section 65 to.....	77
EXEMPTION—	
issuing false certificates of.....	649
not a ground of challenge to juror	1075
EXONERATION OF BAIL— See BAIL.	
EXPLOSION—	
death from.....	368
EXPENSES—	
of insane defendant committed to asylum, who pays.....	1373
of arresting fugitives from justice.....	1557
EXPERTS—	
as witnesses on trial for forgery.....	1107

EXPOSURE—	Section.
of persons affected with contagious disease.....	394
See INDECENT EXPOSURE.	
EXTORTION—	
by executive officers.....	70
defined.....	518
what threats may constitute.....	519
punishment of.....	520
ib	521
obtaining signature by extortionate means.....	522
sending threatening letters with intent to commit.....	523
attempts to commit by verbal threats	524
F	
FALSE CERTIFICATE—	
by public officer.....	167
FALSE CLAIMS—	
presenting to public officer for payment.....	72
FALSE IMPRISONMENT—	
defined.....	236
punishment of.....	237
FALSE PERSONATION—	
marrying under.....	528
in other cases.....	529
receiving property under.....	530
FALSE PRETENSES—	
as to birth of child.....	156
conspiracy to obtain property under.....	182
obtaining property under.....	532
married persons selling lands under.....	534
evidence of.....	1110
FALSE STATEMENT—	-
to affect market price.....	395
FALSE WEIGHTS AND MEASURES—	
defined.....	552
using.....	553
stamping on casks or packages.....	554
FALSIFYING—	
evidence, from Section 132 to.....	138
records and documents, from Section 113 to.....	117
FEEs, EXCESSIVE—	
public officer receiving	70
FELONY—	
defined	17
punishment of.....	18

FELONY— (Continued.)	Section.
limitation of action for.....	800
person charged with, must be taken before whom.....	821
WHAT ARE FELONIES—	
abduction of women.....	265
abduction for prostitution.....	267
abduction of children.....	278
abortion.....	274
adding to or subtracting votes.....	51
administering poison.....	216
administering stupefying drugs.....	222
aiding violation of election laws.....	52
altering draft of bill or resolution.....	83
altering enrolled copy of either.....	84
altering brands.....	357
arson.....	455
asking or receiving bribes by officer.....	68
assaults to murder or kill.....	217
assaults to rape and other crimes.....	220
assaults with caustic, etc.....	244
assaults with deadly weapons.....	245
assisting prisoner to escape.....	109
attempts to escape State Prison.....	106
attempted fraudulent recovery of insurance.....	549
attempts to commit crimes.....	663
ib.....	664
attempts to commit crimes by poison.....	216
attempts to commit crimes by deadly weapons.....	217
bigamy.....	283
ib.....	284
bribes of members of the Legislature.....	57
bribe, giving or offering to.....	85
bribes, receiving by.....	86
bribes of executive officers.....	67
bribes, attempts with jurors.....	95
bribes of Common Council, Supervisors, etc.....	165
bribes, receiving by Judges, etc.....	93
burglary.....	460
burning insured property.....	548
burning buildings not subject of arson.....	600
carrying into prison aids to escape.....	110
changing ballots or returns.....	48
child stealing.....	278
child substitution.....	157
compounding offenses.....	153
convict escaping State Prison.....	105
counterfeiting coin, bullion, etc.....	479
crime against nature.....	286
deserting child.....	271

FELONY (WHAT ARE FELONIES)— <i>(Continued.)</i>	Section.
destroying jails.....	606
destroying works of art, etc.....	623
destroying records by officers.....	113
dueling.....	226
ib	227
embezzlement defined.....	503
embezzlement of accounts and falsifying them	424
extortion in certain cases.....	518
failing to cancel warehouse receipt.....	582
forgery generally, uttering notes, etc.....	470
forgery of public and corporate seal.....	472
forgery of records and returns.....	471
forgery of telegraphic messages.....	474
forgery of notes, bills, etc., and uttering.....	476
forgery of election returns, etc.....	50
frauds in registering voters	42
frauds in presenting bills to officers for payment.....	72
frauds regarding birth of infant.....	156
frauds in organizing corporations.....	558
giving bribes to members of Legislature.	85
giving bribes to Judges, jurors, referees, etc.....	92
giving bribes to Common Council, Supervisors, etc.....	165
grand larceny.....	487
having fraudulent blank license receipts.....	432
housebreaking.....	461
illegal voting.....	45
ib	61
incest	285
improper attempt to influence jurors	95
issuing fictitious bills of lading	577
issuing fictitious warehouse receipts	578
issuing and circulating paper money.....	648
injuring dams, levees, aqueducts, etc.....	607
injuring written instruments	617
injuring highways, private ways, etc.....	588
injuring railroads and railroad bridges	587
kidnapping.....	207
larceny, grand.....	487
larceny out of State of property received in	497
larceny records by officers.....	113
leaving State to fight duel.....	231
leaving State to engage in prize fight.....	414
making false entries in records or returns.....	471
making fictitious bills	476
making counterfeit dies or plates	480
making false manifests	541
manslaughter.....	192
masking or removing signal lights.....	610

FELONY (WHAT ARE FELONIES)— (<i>Continued.</i>)	Section.
married person selling land by misrepresentation.....	534
marrying under false personation.....	528
mayhem	203
misprision of treason.....	38
misconduct of jurors, referees, etc.....	96
mock auctions	535
murder	187
neglect of duty by Board of Examiners.....	441
neglect to pay over money by officer.....	425
offering forged or false instrument for record	115
offering false evidence.....	132
officer refusing to surrender books, etc	76
officer suffering escapes.....	108
officer receiving bribes	93
ib	84
ib	83
officer neglecting to pay over money.....	425
officer buying scrip or being interested in contracts	71
perjury.....	118
perjury, subornation of.....	127
possessing counterfeit bullion.....	479
possessing forged notes.....	475
preventing meeting of Legislature.....	81
preparing false evidence.....	134
poisoning food, medicine, water, etc.....	347
procuring execution of innocent person	128
prize fighting.....	412
ib.....	414
rape.....	261
resisting process.....	411
rescuing prisoners.....	101
robbery	211
seduction	266
selling land twice	533
selling hypothecated or pledged property.....	581
treason.....	37
treason, misprision of.....	38
using gunpowder in certain way, etc.....	601
vessel willfully destroying.....	539
ib.....	540
violating sepulture.....	290
ib.....	291
violating election laws.....	61
violation of laws against dealing in scrip.....	71
FEMALES—	
procuring, under seventeen, to perform in public.....	306
ib	307

FEMALES— (<i>Continued.</i>)	Section.
abduction of.....	285
abduction of, for purpose of prostitution.....	287
FERRY—	
maintaining unlawfully.....	386
violation of conditions of undertaking to keep.....	387
neglecting to pay toll for crossing.....	389
FICTITIOUS NAME—	
proceedings when defendant indicted by.....	953
ib	989
FINES—	
officer failing to pay over, collected.....	427
may be added to imprisonment	672
duration of imprisonment, until paid.....	1205
ib	1456
judgment to pay, constitutes a lien.....	1207
judgment to pay, how executed... ..	1214
ib	1215
ib	1454
imposed on corporations, how collected.....	1396
disposition of.....	1457
ib	1570
FIRE—	
setting woods on.....	384
obstructing attempts to extinguish.....	385
prisoners may be removed in case of.....	1607
setting, to woods of State or the United States, note to.....	384
larceny of goods saved from, in San Francisco.....	500
FIREARMS—	
selling to Indians.....	398
FIRE DEPARTMENT—	
officers of, issuing false certificates of exemption.....	649
FISH—	
protection of, from Sec. 631 to.....	637
ib., Act continued in force, Subdivision 8	23
trout, not to be taken at certain seasons.....	631
ib., Act continued in force, Subdivision 9	23
trout, not to take except by hook in certain counties	632
trout, not to use nets, etc.....	633
salmon, not to be taken at certain season.....	634
taking or destroying by certain means.....	635
owners of dams to provide fish ladders, etc.....	637
Indians may take fish for their use.....	636
Acts relating to, continued in force, Subdivisions 8, 9, 10, 11, 12.....	23

FIXTURES—	Section.
larceny of.....	495
FOOD—	
adulterating, etc.....	382
disposing of tainted.....	383
FOREIGN CONVICTS—	
importing.....	173
FOREIGN LAW—	
Acts punishable under	655
FORCE—	
what degree of, may be used in making arrest.....	843
FORCIBLE ENTRY AND DETAINER—	
punishment of	418
FOREMAN OF GRAND JURY—	
appointment of.....	902
oath of.....	903
may administer oath to witnesses.....	918
FORESTS OF STATE, Etc.—	
firing, Act of 1872, note to.....	384
FORFEITURE—	
OF PROPERTY—	
conviction of crime does not work.....	677
OF BAIL OR DEPOSIT—	
in what cases and how ordered.....	1305
when and how discharged.....	1305
to be enforced by action.....	1306
how disposed of.....	1307
ib	1570
FORFEITURE OF OFFICE—	
for acting without qualifying.....	65
by members of the Legislature.....	88
for conviction of crimes.....	98
for inhumanity to prisoners.....	147
for violation of duties	661
for asking or receiving bribes.....	68
for receiving rewards for deputation.....	74
FORGERY—	
of election returns.....	50
offering forged instruments for record.....	115
of trade marks.....	350
of State revenue stamps.....	437
of wills, conveyances, notes, bonds, etc.....	470
of records.....	470
of public and corporate seals.....	472
punishment of.....	473

FORGERY— (<i>Continued.</i>)	Section.
of telegraphic messages.....	474
possessing or receiving forged notes, etc.....	475
pleading in an indictment for, in certain case.....	965
evidence of experts on trial for.....	1107
FORM—	
of warrant of arrest.....	814
ib	1427
of commitment	863
ib	872
ib	873
ib	877
of bench warrant	935
ib	981
ib	1197
of indictment.....	951
of undertaking on bail.....	1278
ib	1316
of subpoena	1327
of summons against corporations	1391
of Coroner's warrant.....	1518
of search warrant.....	1529
FRAUD—	
management corporation, from Sec. 557 to.....	572
in concealing property.....	154
ib	155
as to birth of child.....	156
in special partnership.....	358
to affect market price.....	395
in subscriptions of stock of corporations.....	557
in procuring organization of corporations, etc	558
in keeping accounts of corporations.....	563
in fitting out vessels.....	541
destroying vessels.....	539
regarding wrecked property.....	544
destroying insured property.....	548
in presenting proofs of property.....	549
FRAUDULENT CONCEALMENT—	
of property by debtor	154
of property by defendant.....	155
FRAUDULENT CONVEYANCES—	
penalty for being a party to.....	531
FRAUDULENT INSOLVENCIES—	
by corporations, etc., from Section 557 to.....	572
FRAUDULENT DOCUMENTS—	
issuing, etc.....	577
ib	583

FREEHOLD—	Section.
malicious injury to.....	602
FREIGHTS AND FARES—	
overcharges by railroad officer.....	525
FUGITIVES FROM JUSTICE—	
rewards for apprehension of.....	1547
from another State, when to be delivered up.....	1548
magistrate to issue warrant.....	1549
arrest and commitment of.....	1550
ib	1551
admission of, to bail.....	1552
District Attorney to be notified of arrest of.....	1553
duty of District Attorney in regard to.....	1554
when must be discharged.....	1555
proceedings against, to be transmitted.....	1556
from this State.....	1557
expense incurred in arresting.....	1557
no fee or reward for arresting.....	1558
FUNDING ACTS—	
continued in force, Subdivision 3.....	23
G	
GAMBLING OR GAMING—	
prohibited; penalty for.....	330
permitting, in house owned or rented.....	331
winning by fraudulent means.....	332
witness to, neglecting or refusing to attend trial	333
privilege of witness to.....	334
duties of officers in regard to.....	335
GAME—	
violating laws for preservation of	626
ib	627
ib	628
having in possession during time of prohibited killing	629
GAS—	
stealing	498
GAS PIPES—	
injuring or obstructing	624
GIFT ENTERPRISE—See LOTTERY.	
GOVERNOR—	
may order out troops to aid in executing process.....	725
may in certain cases declare county in insurrection	732
may revoke such proclamation.....	733
duties of in regard to death sentence.....	1218
ib	1219
may grant commutations, reprieves, and pardon.....	1417
power of, in convictions for treason	1418
to communicate to Legislature pardons, etc., granted.....	1418

GRAND JUROR—	Section.
acting after challenge has been allowed	164
disclosing fact of indictment having been found	168
disclosing what transpired before the Grand Jury	169
oath of	904
See CHALLENGE; GRAND JURY.	

GRAND JURY—	
may present accusation against public officer	758
formation of, provided for	893
who may challenge	894
cause of challenge to panel	895
cause of challenge to individual juror	896
challenge, how taken and tried	897
decision upon challenge	898
effect of allowing challenge to panel	899
effect of allowing challenge to juror	900
objections to, can only be taken by challenge	901
appointment of foreman of	902
oath of foreman of	903
oath of members of	904
charge of the Court to	905
retirement and discharge of	906
special	907
order for special	908
order for special, how executed	909
special, how formed	910
powers of	915
presentment by, defined	916
indictment by, defined	917
foreman may administer oath to witnesses	918
evidence receivable before	919
not bound to hear certain evidence	920
degree of evidence to warrant indictment	921
jurors must declare their knowledge as to crimes	922
must inquire into cases of persons imprisoned	923
entitled to access to public prisons	924
when and from whom may ask advice	925
who may be present at sessions of	925
secrets of, to be kept	926
juror not to be questioned for his conduct	927
presentment by, must be by twelve members	931
indictment by, must be by twelve members	940
charge can be resubmitted to	942
to investigate charges against corporations	1395

See GRAND JUROR; CHALLENGE.

GRAND LARCENY—See LARCENY.

GRAVES—See SEPULTURE.

GUARD—	Section.
for jails.....	1610
GUIDE BOARDS—	
injuring.....	590
GUILT—	
reasonable doubt as to, ground for acquittal	1096
GUNPOWDER—	
keeping, unlawfully.....	375
using, in destroying and injuring buildings.....	601

H**HABEAS CORPUS, WRIT OF—**

refusal to issue or obey.....	36
reconfining persons discharged upon.....	363
concealing persons entitled to benefit of.....	364
bail on.....	1286
who may prosecute.....	1473
application for, how made.....	1474
by whom issued and to whom returnable.....	1475
must be granted without delay.....	1476
to contain what.....	1477
how served.....	1479
disobedience to.....	1480
return, what to contain.....	1480
body must be produced, when.....	1481
when hearing may proceed without the body.....	1482
hearing on return.....	1483
proceeding on hearing.....	1484
when Court may discharge the party.....	1485
when to remand the party.....	1486
grounds of discharge in certain cases.....	1487
ib	1488
for purposes of bail.....	1489
Judge may take.....	1491
Judge, when to remand.....	1492
disposition of party pending proceedings on return.....	1494
defect in form of, when immaterial.....	1495
imprisonment after discharge on.....	1496
may issue in certain cases.....	1497
service of.....	1502
by whom issued and when returnable.....	1503
where returnable.....	1504
damages for failure to obey.....	1505

HEALTH LAWS—

violation of.....	377
neglecting to perform duties under.....	378

HIGHER OFFENSE—

than charged, proceedings for.....	1112
------------------------------------	------

HIGHWAYS—	Section.
railroad crossing, neglecting to sound bell or whistle.....	390
racing on.....	396
malicious injury to.....	588
HOME OF THE INEBRIATE—	
Act continued in force, Subdivision 18.....	23
HOMICIDE—	
excusable.....	195
justifiable.....	196
ib.....	197
bare fear does not justify.....	198
justifiable and excusable, not punishable.....	199
attempts to commit.....	216
assaults to commit.....	217
MURDER—	
defined.....	187
degrees of.....	189
punishment of.....	190
assault with intent to commit.....	217
jurisdiction of an indictment for, in certain cases.....	790
limitation of action for.....	799
when burden of proof shifts in trials for.....	1106
MANSLAUGHTER—	
defined.....	192
voluntary and involuntary.....	192
punishment of.....	193
party injured must die within a year and a day.....	194
HOURS OF LABOR—	
by minors, not required.....	651
on public works, Act of 1872, in note to.....	651
HORSE RACING—See RACING.	
HOUSE—	
keeping disorderly.....	316
HOUSEBREAKING—	
defined.....	461
punishment of.....	462
HOUSE OF ILL-FAME—See BAWDY HOUSE.	
HUMBOLDT BAY—	
throwing sawdust into.....	612
HUSBAND AND WIFE—	
selling lands under false pretenses.....	534
when are incompetent witnesses.....	1322

I

IDIOTS—	Section.
incapable of committing crime.....	26
IGNORANCE OF FACT—	
a defense for crime committed under.....	26
See MISTAKE.	
ILL-FAME—	
keeping or residing in house of.....	315
ib., Subdivision 7.....	23
IMPEACHMENT—	
right of, preserved.....	10
certain officers liable to.....	737
articles of, how prepared.....	738
must be tried by the Senate.....	738
articles of, to whom delivered.....	739
time of hearing.....	740
service on defendant.....	741
proceeding on failure to appear.....	742
defendant may answer or demur to	743
if demurrer overruled, must answer.....	744
Senate must be sworn on trial of.....	745
two thirds necessary to conviction.....	746
judgment on conviction, how pronounced.....	747
ib.....	748
nature of judgment	749
officer on trial by, disqualified until acquitted.....	751
vacancy thus occurring, how filled.....	751
of Lieutenant Governor.....	752
not a bar to indictment.....	753
IMPRISONMENT—	
second term of, when commences.....	669
for life.....	671
when term of, commences.....	670
fine may be added to.....	672
civil rights suspended during.....	673
civil death from.....	674
preceding sections limited.....	675
convict protected during.....	676
forfeiture resulting from.....	677
term of, on certain judgment, when to commence.....	1205
duration on, judgment to pay fine.....	1206
judgment of, how executed.....	1215
ib.....	1455
duty of Sheriff on receiving copy of judgment of.....	1216
See FALSE IMPRISONMENT.	
IMPROVEMENTS, PUBLIC—	
injuring	622

INCEST—	Section.
punishment of	285
jurisdiction of indictment for.....	785
INCLOSURES—	
passing through and leaving open, Act of 1872, note to	602
INDECENT—	
exposure of person, exhibition, pictures, advertisements, etc.....	311
articles to be seized.....	312
ib.....	313
and destroyed.....	314
INDIANS—	
selling liquor to.....	397
selling firearms and ammunition to.....	398
may take fish	636
INDICTMENT—	
disclosing the fact of its having been found, by juror, etc.....	168
conspiracy to procure false and malicious.....	182
all crimes must be prosecuted by.....	682
impeachment not to bar.....	753
jurisdiction of, for kidnapping, abduction, etc.....	784
jurisdiction of, for bigamy or incest.....	785
jurisdiction of, for escaping from prison.....	787
jurisdiction of, for treason.....	788
jurisdiction of, stealing property out of and bringing in State.....	789
jurisdiction of, for murder, where party dies in this State.....	790
jurisdiction of, against accessory.....	791
former conviction or acquittal, bar to.....	793
ib.....	794
when considered found.....	803
what prosecutions must be by.....	838
in what Court found.....	890
defined.....	917
degree of evidence to warrant.....	921
must be found by twelve jurors, indorsed, etc.....	940
if not found, depositions to be returned to Court.....	941
names of witnesses to be placed at foot of.....	943
proceedings on, when defendant is not in custody.....	945
how presented and filed.....	944
is first pleading by the people.....	949
what to contain.....	950
form of.....	951
must be direct and certain.....	952
when found by fictitious name.....	953
must charge what.....	954
time of committing offense need not be stated.....	955

INDICTMENT— (<i>Continued.</i>)	Section.
construction of words used in.....	957
ib.....	958
when sufficient.....	959
ib.....	960
what need not be stated in.....	961
pleading, to libel.....	964
pleading, to forgery.....	965
pleading, to perjury.....	966
pleading, to larceny or embezzlement.....	967
pleading, to indecent exposure.....	968
against several.....	970
previous conviction, how pleaded.....	969
principal and accessory.....	971
accessory treated as principal.....	972
accessory liable to, though principal has not been.....	771
when set aside on motion.....	995
objections to, waived, unless motion made.....	996
motion to set aside, when heard.....	997
if motion to set aside, denied or granted, what proceedings are had	997
effect of order for resubmission.....	998
when order to set aside no bar to further prosecution.....	999
transmission of certain.....	1028
ib.....	1029
ib.....	1030
INDORSEMENT—	
on indictment.....	940
on order for admission to bail.....	962
INEBRIATE, HOME OF—	
Act continued in force, Subdivision 13.....	23
INFORMATION—	
of threatened offense.....	701
defined.....	806
of committed offense, must be filed.....	849
what prosecutions must be by.....	889
See ACCUSATION.	
INFORMER—	
of threatened offense, must be examined on oath.....	702
of committed offense, must be examined on oath.....	811
See PROSECUTOR.	
INNKEEPER—	
refusing to receive guests.....	365
INNOCENCE—	
presumed until contrary is shown.....	1096

INQUISITION—	Section.
to be held in certain cases, after judgment of death passed.....	1221
ib	1225
duty of District Attorney upon such.....	1222
INSANE ASYLUM—	
commitment of insane prisoner to.....	1370
expenses of such, how paid.....	1373
INSANE CONVICTS—	
disposition of.....	1582
INSANE PERSONS—	
incapable of committing crimes.....	26
cruel treatment of.....	361
cannot be tried, sentenced, or punished.....	1367
proceedings on judgment against, Section 1221 to.....	1224
Governor to appoint a day to execute.....	1224
expenses of mileage, etc.....	1373
INSANITY—	
of defendant, when claimed, how determined.....	1368
order of trial of question of.....	1369
charge of the Court in such case.....	1369
verdict and proceeding thereon.....	1370
if defendant committed to asylum on ground of, bail exonerated....	1371
must remain in asylum till sane.....	1372
INSOLVENCY, FRAUDULENT—See FRAUD; FRAUDULENT CONVEYANCES.	
INSOLVENT BANK—	
officer of, receiving deposits in.....	562
INSPECTORS OF ELECTION—	
changing ballots or altering returns.....	48
unfolding or marking tickets.....	49
INSTRUMENTS, WRITTEN—	
larceny of.....	492
completed but not delivered, larceny of.....	494
making, on unstamped paper.....	438
injuring or destroying.....	617
INSURANCE—	
affecting, with foreign company not giving bond.....	439
presenting false proof in support of claim on policy of.....	549
INSURED PROPERTY—	
burning or destroying.....	548
INSURRECTION—	
resisting process in county declared in	411
Governor may declare county in, when.....	732
may revoke such proclamation, when.....	733
See RIOT; UNLAWFUL ASSEMBLY.	

INTENT—	Section.
must be united with act to constitute crime.....	20
how manifested	21
how determined, where crime committed under intoxication	22
INTERROGATORIES—	
on an examination on commission, how settled and allowed.....	1355
INTERVENTION OF OFFICERS—	
in what cases	697
persons assisting, justified	698
INTIMIDATION—	
of jurors.....	95
of electors.....	53
INTOXICATION—	
no excuse for crime	22
acts of physicians under	346
selling minors drinks to produce; note to.....	307
of engineer in charge of train.....	391
of conductor or driver.....	391
train dispatcher.....	391
telegraph operator.....	391
INVENTORY—	
of property taken on search warrant.....	1537
copy of, to whom delivered.....	1538
IRREGULARITY—	
dismissal of appeal for	1248
ISSUE OF FACT—	
defined	1041
how tried.....	1042
of law to be tried as when.....	251
ib	1125
in trial of challenge to juror.....	1061
of facts denied in challenge.....	1078
how tried.....	1079
ib	1080
ib	1081

J

JAIL—	
destroying or injuring.....	606
guard for	1610
See COUNTY JAILS; PRISON.	
JAILER—	
suffering prisoners to escape.....	108
answerable for safe keeping of United States prisoners.....	1802
papers served on, for prisoner.....	1609
See KEEPER.	

JUDGES—See MAGISTRATES; OFFICERS; JUDICIAL.

Section.

JUDGMENT—

Justice or Constable purchasing.....	97
conviction by, in Justice's Court, jury being waived.....	689
on impeachment, how pronounced.....	747
ib.....	748
nature of such	749
of suspension from office, effect of.....	750
civil death from.....	674
suspension of rights by.....	673
fine may be added to.....	672
forfeiture by law	677
judgment, when commenced to be executed.....	670
on conviction of officer of accusations.....	769
how pleaded.....	962
on demurrer.....	1007
on special verdict.....	1155
on informal verdict.....	1161
motion in arrest of	1185
ib	1450
Court may cause an arrest of, without motion	1186
effect of arresting	1187
appointing time for.....	1191
presence of defendant for.....	1193
arraignment of defendant for.....	1200
what cause may be shown against pronouncing.....	1201
to be pronounced, if no cause shown.....	1202
to pay fine, duration of imprisonment.....	1205
to pay fine, constitutes a lien.....	1206
entry of.....	1207
authority for execution of.....	1213
for fine, how executed	1214
for fine and imprisonment, how executed.....	1215
of imprisonment, duty of Sheriff on receiving copy of.....	1216
of death, warrant of execution on.....	1217
of death, duty of Judge on passing.....	1218
of death, duty of Governor on receiving copy of.....	1219
of death, when suspended.....	1220
of death, how executed.....	1228
of death, passed and defendant supposed insane, inquiry to be had.	1221
proceedings on such inquisition.....	1222
ib	1223
ib	1224
when female supposed to be pregnant, and under death sentence....	1225
ib	1226
of death, in force but not executed, proceedings	1227
on appeal.....	1258
execution stayed by certificate of Supreme Court or Judge.....	1243

JUDGMENT— (*Continued.*)**Section.**

when convict insane, Section 1221 to.....	1224
when encephalic, Section 1225 to.....	1226
on appeal, what may be reviewed.....	1259
may be modified, affirmed, or reversed.....	1260
of reversal on appeal, when discharges defendant.....	1262
of affirmance on appeal, to be executed	1263
of appellate Court, how entered and remitted.....	1264
in Justice's Court, to be entered on the minutes.....	1453
against prosecutor to pay costs.....	1448
when to be rendered.....	1449

JUDGMENT ROLL—

what must be entered on.....	1207
------------------------------	------

JUNK DEALERS—

buying from minors.....	501
other sections apply to.....	502
failing to keep register.....	339
refusal to disclose facts.....	342
refusing inspection of books	343

JURISDICTION—

of offenses committed in this State.....	777
of offenses commenced out of but committed in the State.....	778
for fighting duel out of, and party dies in the State.....	779
when inhabitant leaves the State to evade dueling laws.....	780
when offense is committed partly in two counties.....	781
of offenses committed on boundary of counties.....	782
of offenses committed on a vessel.....	783
of indictment for kidnapping, abduction, etc.....	784
of indictment for bigamy or incest.....	785
of feloniously taking property from one county to another.....	786
of indictment for escaping from prison.....	787
of indictment for treason, when overt act out of State.....	788
of indictment for stealing property out of and bringing into the State.....	789
of indictment for murder, in certain case.....	790
of indictment against accessory.....	791
where principals are not present at commission of crime.....	792
when concurrent, autrefois convict or acquit, bar.....	793
ib	794
pleading	802
where Court has no, may discharge jury.....	1113
of appellate Court, when ceases.....	1265

JURORS—

giving bribes to.....	92
receiving bribes.....	93
improper attempts to influence.....	96
misconduct of.....	96

JURORS— (*Continued.*)

Section.

must declare knowledge of case in Court.....	1120
may be permitted to separate.....	1121
when one becomes unable to act.....	1123
oath of.....	1437

See CHALLENGE; GRAND JUROR.

JURY—

disturbance before, contempt of Court.....	166
trial by, preserved in certain cases.....	767
formation of.....	1046
number of counsel who may argue to.....	1095
may be discharged, when the Court has no jurisdiction.....	1118
proceedings, if so discharged	1114
ib	1115
proceedings, if discharged, in other cases.....	1117
Court may advise to acquit, when.....	1118
when and how to view premises.....	1119
must be admonished at each adjournment.....	1122
to determine law and fact in actions for libel.....	1125
charging.....	1127
ib	1439
may decide in Court, or retire.....	1128
ib	1440
room and accommodation for, after retirement.....	1135
room and accommodation, when kept together.....	1136
may take what papers with.....	1137
may return to Court for information.....	1138
to be discharged, if juror becomes unable to act.....	1139
when not to be discharged.....	1140
when discharged, no verdict being given.....	1141
ib	1443
Court may adjourn in absence of.....	1142
return of.....	1147
manner of taking verdict.....	1149
ib	1441
kind of verdict.....	1150
to find degree of crime.....	1157
may convict of lesser offense.....	1158
when Court may direct to reconsider verdict.....	1160
polling.....	1162
charge of, on question of insanity.....	1369
verdict of, on question of insanity.....	1370
formation of, in Justice's Court.....	1435

See CHALLENGE; CORONER'S JURY; GRAND JURY.

JURY LISTS—

adding names to.....	116
falsifying.....	117

JUSTICE—	Section.
other offenses against public, from Section 142 to.....	177
JUSTICE'S COURT—	
proceedings must be commenced by complaint.....	1426
when warrant of arrest must issue; form of.....	1427
minutes, how kept	1428
plea, and how put in	1429
issue, how tried	1430
change of venue, when granted.....	1431
proceedings on change of venue	1432
postponement of the trial.....	1433
defendant to be present.....	1434
jury trial, when to be demanded; formation of the jury.....	1435
challenges	1436
oath of jurors.....	1437
trial, how conducted.....	1438
to decide questions of law, but not to charge on matters of fact.....	1439
jury may decide in Court or retire; oath of officer on their retire- ment	1440
verdict of jury, how delivered and entered	1441
verdict, when several defendants are tried together	1442
jury, when to be discharged without a verdict.....	1443
if discharged, defendant may be tried again.....	1444
proceedings on plea of guilty or conviction	1445
judgment of fine may direct imprisonment.....	1446
defendant, when to be discharged and prosecutor pay costs.....	1447
judgment against prosecutor for costs.....	1448
judgment, when to be rendered.....	1449
when defendant may move for a new trial or in arrest of judgment.	1450
new trial, grounds of.....	1451
grounds of motion in arrest of judgment.....	1452
judgment to be entered in the minutes	1453
judgment of acquittal, or fine only, defendant to be discharged.....	1454
judgment of imprisonment, how executed.....	1455
judgment of imprisonment till fine paid, how executed.....	1456
fines, disposition of.....	1457
defendant may be admitted to bail.....	1458
subpoenas	1459
entitling affidavits.....	1460
appeals, when allowed.....	1466
appeals; how taken, heard, and determined.....	1467
statement on appeal.....	1468
if new trial granted, in what Court had	1469
proceedings, if appeal is dismissed or judgment affirmed.....	1470
JUSTICE OF THE PEACE—	
purchasing judgment.....	97
See MAGISTRATE.	
JUSTIFIABLE HOMICIDE—See HOMICIDE.	

K

KEEPER OF JAIL—

Section.

suffering prisoners to escape	108
refusing to receive prisoners accused	142
answerable for safe keeping of U. S. prisoners.....	1602
in contiguous county, to receive prisoners.....	1604

See COUNTY JAILS; JAILS; JAILER.

: KIDNAPPING—

defined.....	207
punishment of	208
jurisdiction of indictment for	784

KILL—

attempts to.....	216
assault to.....	217

KNOWINGLY—

defined	7
---------------	---

L

LABOR—

hours of, for wards, etc.....	651
hours of, on public works; Act of 1872; note to.....	651
prisoners in County Jails may be required to.....	1613
rules and regulations therefor.....	1614

LAND—

forcible entry and detainer.....	418
unlawful reentry upon.....	419
selling twice.....	533
married persons selling under false pretenses	534
inclosures, opening.....	602

LAND MARKS—

injuring	605
----------------	-----

LARCENY—

of records	113
ib	114
assault with intent to commit grand.....	220
defined	484
of lost property.....	485
degrees of.....	486
grand, defined	487
petit, defined	488
punishment of grand.....	489
punishment of petit.....	490
of written instruments.....	492
of passage tickets.....	493
of fixtures	495
committed out of and property received in the State.....	497

LARCENY— (<i>Continued.</i>)	Section.
jurisdiction of indictment for, in certain case.....	786
pleading in an indictment for.....	967
of goods saved from fire in San Francisco	500
LAW—	
Court to decide questions of.....	1124
except in libel, when jury decides question of.....	251
ib	1125
LAWFUL ASSEMBLY— See MEETINGS.	
LAWFUL RESISTANCE—	
by whom made	692
by the party, when and to what extent.....	693
by others, when and to what extent.....	694
LEGISLATURE—	
preventing meeting of.....	81
disturbance of.....	82
altering draft of bill of.....	83
altering enrolled copy of bill of.....	84
giving or offering bribes to members of.....	85
members of, receiving bribes.....	86
refusing to attend or testify before committee of.....	87
forfeiture of office by member of.....	88
duty of, on conviction for treason.....	1418
LESSER OFFENSE—	
jury may convict of.....	1158
LETTERS—	
opening or publishing sealed.....	618
sending, when deemed complete.....	660
See THREATENING LETTERS.	
LEVEES—	
injuring or destroying.....	607
LIBEL—	
defined.....	248
punishment of.....	249
malice presumed.....	250
truth may be given in evidence.....	251
jury to determine both law and fact.....	251
ib.....	1125
publication of, defined.....	252
report of official proceedings, privileged.....	254
threatening to publish.....	257
liability of editor, publisher, etc.....	253
offer to prevent publication of, for money.....	257
pleading in an indictment for.....	964
LIBRARIES—	
injuring public.....	623

LICENSE—	Section.
unlawfully having blank receipts for.....	432
delivering, without receipt for payment.....	431
auctioneer selling without.....	436
carrying on business without.....	434
LIEN—	
judgment to pay a fine constitutes a.....	1207
LIFE—	
imprisonment for.....	671
LIEUTENANT GOVERNOR—	
impeachment of.....	752
State Prison Director.....	1573
when vacancy in, who to act as.....	1574
pay of, as Director.....	1575
LIGHTS, SIGNAL—	
masking, removing, or exhibiting false.....	610
LIMITATION—	
no, for action for murder.....	799
of action for all other felonies.	800
of action for misdemeanor.....	801
ib.....	802
LIQUOR—	
keeping, within two miles of State Prison.....	172
where sold, amusements prohibited on Sunday.....	299
selling at camp meeting.....	304
ib.....	305
employing women to sell, at theatres, etc.....	303
adulterating.....	382
selling to Indians.....	397
selling to minors, note to.....	307
LOG ROLLING—	
punishment of.....	86
LOGS—	
defacing marks on.....	356
LOST PROPERTY—	
larceny of.....	485
LOTTERY—	
defined	319
punishment for drawing.....	320
punishment for selling tickets for.....	321
aiding	322
offices.....	323
advertising offices of.....	323
insuring tickets of.....	324
publishing offers to insure.....	324

LOTTERY— (<i>Continued.</i>)	Section.
property offered for disposal at, forfeited.....	325
letting building for purpose of.....	326
evidence on trial for selling tickets of.....	1109
LUMBER—	
defacing marks on.....	356
LUNATICS— See INSANE PERSONS.	
	M
MAGISTRATE—	
defined.....	807
who are.....	808
See OFFICERS, JUDICIAL.	
MALICE—	
defined.....	7
presumed, in case of libel.....	250
MALICIOUS MISCHIEF—	
in general defined.....	594
specified, from Section 595 to	625
animals, poisoning	596
animals, killing, etc.....	597
killing birds in cemetery.....	598
killing sea lions and seals.....	599
burning buildings.....	600
snow sheds.....	600
using gunpowder.....	601
to freehold.....	602
standing crops	604
to landmarks.....	605
to jails	606
to bridges, dams, levees, etc.....	607
rafts.....	608
buoys and beacons	609
signal lights	610
to navigable streams.....	611
others enumerated, from Section 612 to.....	625
MALICIOUS INJURIES—	
injuries to railroad bridges.....	587
to public ways.....	588
to toll houses, etc.....	589
to milestones.....	590
to telegraph lines.....	591
MILITIA LAW—	
failure to attend parade or drill.....	652
ib	653
may be enforced in case of riots.....	725
who may order out for.....	728

INDEX.

417

MILITIA LAW— (<i>Continued.</i>)	Section.
commander to obey order	729
so is armed force.....	730
conduct of troops	731
MALPRACTICE—	
by intoxicated physicians....	346
See ATTORNEY.	
MANSLAUGHTER— See HOMICIDE.	
MARKET PRICE—	
fraud to affect.....	395
MARKS—	
land, defacing.....	605
defacing, on wrecked property.....	355
defacing, on lumber, logs, etc.....	356
and brands, Acts continued in force, Subdivision 6.....	23
See TRADE MARKS; BRANDS.	
MARRIAGE—	
taking woman with intent to compel her to marry.....	265
to one already married.....	284
incestuous	285
contraction of solemnization of incestuous.....	359
making false return or record of.....	360
contracted fraudulently.....	526
MARRIED WOMEN—	
when incapable of committing crimes.....	26
MAYHEM—	
defined	203
punishment of.....	204
assault with intent to commit.....	220
MAYOR—	
duty of, when breach of public peace threatened.....	720
MEASURES, FALSE— See FALSE WEIGHTS.	
MEETINGS, LAWFUL—	
disturbing	59
MEETINGS, PUBLIC—	
preventing electors from attending.....	58
disturbing certain.....	403
ib	59
MEETINGS, RELIGIOUS—	
disturbing	302
MEETINGS, UNLAWFUL— See UNLAWFUL ASSEMBLY.	
MILE STONES—	
injuring	590

MILITIA—See Troops.	Section.
MINORS—	
selling drinks to, note to	307
buying junk from	501
MISCARRIAGE—See ABORTION.	
MISCHIEVOUS ANIMALS—	
death from keeping or having.....	399
MISDEMEANOR—	
defined	17
punished.....	19
aiding in.....	659
limitation of action for.....	801
ib	802
person charged with, must be taken before whom.....	821
WHAT ARE MISDEMEANORS—	
aiding lottery.....	322
aiding apprentices to run away.....	646
aiding seamen to desert by harboring.....	645
aiding seamen to desert by enticing.....	644
acting in public capacity unauthorized.....	65
adulterating food, drugs, liquors, etc.....	382
administering extra-judicial oath.....	152
altering telegraph messages.....	620
animals, poisoning.....	596
arresting or attaching dead bodies.....	295
assaults defined	240
assaults by officer under color of authority.....	149
attempts to vote, not being qualified.....	46
attempts to extort by verbal threats.....	524
attorney, defending certain cases.....	162
attorney, buying demands in suit.....	161
attorney, misconduct by.....	160
barratry, common.	158
battery defined.....	242
betting on elections.....	60
boats, mismanagement by captain, etc.....	348
boats, boilers of.....	349
bribes, to witnesses.....	137
bribes, witness taking.....	138
bridge or ferry, maintaining without license.....	386
ib	387
bridge, toll, riding, or driving fast on.....	388
bridge or ferry, crossing without paying tolls.....	389
burglarious tools, having.....	466
buying appointment to office.....	73
buying demands in suit, by attorney.....	161
carriers and innkeepers refusing guests and passengers.....	365

MISDEMEANOR (WHAT ARE MISDEMEANORS)— <i>(Continued.)</i>	Section.
child, omission to furnish necessities to	270
child, selling liquors to, note to	307
Chinese, bringing into State.....	174
compounding offenses.....	153
convicts, communicating with.....	171
convicts, importing foreign	173
criminal contempts	166
criminal conspiracy.....	182
dead animals, putting in streets and rivers, etc.....	374
deadly weapons, rudely exhibiting.....	417
deadly weapons, having.....	467
defacing tombs and monuments.....	296
disturbing religious meetings.....	302
disturbing political meetings.....	59
disturbing lawful assemblies.....	403
disturbing peace in night-time.....	415
elections, refusal by voter to be sworn.....	43
elections, refusal to answer questions by officers of.....	43
elections, refusal to obey summons by officer of registration.....	44
elections, attempt to vote not being qualified.....	46
elections, procuring illegal voting.....	47
elections, intimidating, corrupting, etc., electors.....	53
elections, Inspector of unfolding or marking ticket.....	49
elections, unlawfully furnishing money at	54
elections, unlawful offer to procure office for elector.....	55
ib.....	56
elections, preventing public meetings for purposes.....	58
elections, disturbing such meetings.....	59
elections, betting on.....	60
exposure, indecent, person, pictures, etc.....	311
exposure of persons having contagious disease.....	394
exposure, threatening by letter.....	650
evidence, destroying.....	135
females, exhibiting for hire, procuring.....	306
ib	307
fire, setting to woods, etc.....	384
fire, obstructing attempts to extinguish.....	385
forcible entry and detainer.....	418
forcible entry, returning to retake.....	419
frauds, by debtor concealing property.....	155
frauds, by defendant in same	156
frauds, in special partnerships.....	358
frauds, in increasing weight of package.....	381
frauds, to affect market price	395
frauds, by personation.....	529
frauds, in conveyancing.....	531
frauds, in obtaining money, false pretense.....	532
frauds, in weights and measures.....	553

MISDEMEANOR (WHAT ARE MISDEMEANORS)— (<i>Continued.</i>)	Section.
frauds, in stamping corks, etc.....	554
frauds, in stock subscriptions	557
frauds, in using name in prospectus.....	559
fighting duel, posting for not.....	229
fighting for prize.....	413
Grand Jurors, acting after challenge allowed.....	164
Grand Jurors, disclosing transactions of.....	169
gambling defined, etc	330
gambling, permitting in house.....	331
gambling, winning at by fraud	332
gambling, witness of refusing attendance.....	333
gambling, officer refusing to prosecute for.....	335
game laws, violating.....	630
ib	631
ib	632
ib	633
illegally using phosphorus.....	634
unlawfully catching fish.....	635
postponing telegraph messages out of regular turn.....	638
gunpowder, keeping unlawfully.....	375
health and quarantine laws, violating	376
ib.....	377
health and quarantine laws, neglecting duty under.....	378
ill-fame, house of, residing in or keeping.....	315
imprisonment, false.....	237
insurance laws, violating.....	439
injuring toll houses, etc.....	589
injuring milestones and guide boards.....	590
injuring telegraph lines.....	591
injuring standing crops.....	604
injuring signals.....	615
injuring works of art.....	622
injuring gas and water pipes.....	624
intoxication, malpractice by physician from.....	346
intoxication, engineer.....	391
junk dealers, buying of minors.....	501
junk dealers, governed by law as pawnbroker	502
keeping open business places on Sunday.....	300
keeping disorderly house	316
keeping house of ill-fame.....	315
keeping pest house within certain limits.....	373
larceny, petty	488
larceny, of gas.....	496
larceny, of water.....	499
Legislature, disturbing while in session.....	82
Legislature, witness refusing to testify before.....	87
libel defined.....	248
libel, threats to publish.....	257

MISDEMEANOR (WHAT ARE MISDEMEANORS)— (Continued.)	Section.
license, maintaining bridge or ferry without.....	386
ib.....	387
license, doing business without.....	435
auctioneering without.....	436
lottery, drawing.....	320
lottery, selling tickets for.....	321
lottery, keeping or advertising office.....	323
lottery, insuring ticket.....	324
lottery, letting building for.....	325
<i>Malicious Mischief in general</i>	594
poisoning animals.....	596
killing or maiming animals.....	597
killing birds in cemeteries.....	598
killing seals and sea lions.....	599
malicious injuries to freehold.....	602
injuries to standing crops.....	604
defacing or removing landmarks.....	605
burning or injuring rafts.....	608
setting vessels adrift.....	608
removing buoys and beacons.....	609
obstructing navigation.....	611
ib.....	612
ib.....	613
mooring vessels to buoys.....	614
injuring United States Coast Survey signals, etc.....	615
tearing down notices.....	616
opening or publishing sealed letters.....	618
disclosing telegraph message.....	619
altering telegraph messages.....	620
opening telegraph messages.....	621
injuring works of art, etc.....	622
injuring gas or water pipes.....	624
drawing water from closed water works.....	625
MISCELLANEOUS—	
using information from telegraph messages.....	639
clandestinely learning contents of message.....	640
bribing telegraph operator.....	641
illegally collecting certain tolls.....	642
violating certain police regulations.....	643
enticing seamen to desert.....	644
harboring deserting seamen.....	645
aiding apprentices to run away.....	646
vagrancy.....	647
issuing false certificates of exemption, by fire department.....	649
sending letters threatening to expose.....	650
<i>Nuisance, maintaining</i>	372

MISDEMEANOR (MISCELLANEOUS)— (Continued.)	Section.
<i>Oath, administering extra-judicial.....</i>	152
oath, taking such.....	151
oath, refusing to take when offering to vote.....	43
officer, omission of duty by.....	176
officer, neglecting to prevent duel.....	230
officer, refusing to inform or prosecute for gambling.....	335
officer, cruel treatment of lunatics.....	361
officer, taking rewards for deputation.	74
officer, exercising duties of, wrongfully.....	75
officer, receiving excessive fees.....	94
officer, purchasing judgment.....	97
officer, refusing to arrest persons charged with crime.....	142
officer, neglect or violating duty by Public Administrator.....	143
officer, receiving fees for arresting fugitives from justice.....	144
officer, who beats a person under color of authority.....	149
officer, making false certificate.....	167
officer, disclosing fact of indictment found.....	168
officer, disclosing evidence before Grand Jury.....	169
officer, solemnizing illegal marriage.....	359
officer, making false return of same.....	360
officer, refusing to issue or obey a writ of habeas corpus.....	362
officer, reconfining person discharged.....	363
officer, concealing person from such writ.....	364
officer, neglecting to disperse rioters.....	410
officer, failure to pay over fines, etc.....	427
officer, refusing inspection of books.....	440
officer, extortion in fees.....	521
officer, misconduct of, corporation.....	561
officer, of savings bank, overdrawing account.....	561
officer, of bank, insolvent, receiving deposit.....	562
officer, publishing false report of condition of corporation.....	564
officer, refusing inspection of books of corporation.....	565
officer, contracting debt beyond assets of corporation.....	566
officer, resisting.....	69
officer, extortion by executive... ..	70
officer, retaking goods from custody of.....	102
officer, escape from.....	107
officer, delay in presenting arrest to magistrate.....	145
officer, making unlawful arrest.....	146
officer, inhumanity to prisoners.....	147
officer, resisting public.....	148
officer, refusing to aid in making arrest.....	150
officer, obstructing in collecting revenue.....	428
officer, false representations to Assessor.....	429
omissions, to furnish child necessities.....	270
omissions, to bury dead body.....	293
omissions, to label drugs, etc.....	380

MISDEMEANOR (MISCELLANEOUS)— (Continued.)	Section.
omissions, of duties by officer.....	176
omissions, of legal obligations.....	176
<i>Pawnbroker, acting without a license.....</i>	338
pawnbroker, failing to keep register.....	339
pawnbroker, usury by.....	340
pawnbroker, selling prior to time to redeem.....	341
pawnbroker, refusing to disclose particulars.....	342
pawnbroker, refusing inspection to officer..	343
penalty, when not, punishment is fixed	177
piloting, unlicensed.....	379
<i>Railroads, neglecting to ring bell, etc.....</i>	390
railroads, engineer intoxicated.....	391
railroads, putting passenger cars in front of freight.....	392
railroads, employes violating duties.....	398
racing, on highways.....	396
riot, defined, etc.....	404
ib	405
remaining after being warned.....	409
neglecting to disperse.....	410
rout, defined, etc.....	406
<i>Selling liquors near State Prison.....</i>	172
search warrants maliciously procured.....	170
selling liquors to Indians.....	397
selling liquors at theaters.....	303
selling liquors at camp meetings.....	304
selling liquors to minors, note to.....	307
selling tainted food	388
selling firearms, etc., to Indians	398
selling State arms.....	442
Sunday, noisy amusements on	299
Sunday, keeping open business on.....	300
Sunday, disturbing religious meetings on.....	302
<i>Taxes, refusing to give Tax Collector name of employe.....</i>	434
taxes, illegally delivering receipts for poll.....	431
taxes, making false statements concerning.....	430
telegraph messages, altering.....	630
telegraph message, disclosing.....	619
telegraph message, opening	621
telegraph information, using.....	639
telegraph message, postponing out of turn.....	638
telegraph message, clandestinely learning contents	640
telegraph message, forging.....	474
trade marks, counterfeiting	350
trade marks, selling goods with counterfeit.....	351
trade marks, defacing on wrecked property.....	355
trade marks, defacing on logs, etc.....	356
trade marks, refilling casks, etc., bearing	354
<i>Unlawful assembly.....</i>	407

MISDEMEANOR (MISCELLANEOUS)— (Continued.)	Section.
<i>Witness deceiving</i>	133
witness before Legislature.....	87
witness, preventing attending of.....	136
witness of gambling refusing attendance.....	333
wrecked property, keeping after salvage paid.....	544
wrecked property, unlawfully keeping.....	545
MISNOMER—See FICTITIOUS NAME.	
MISPRISION OF TREASON—	
what.....	38
punishment of.....	38
MISTAKE OF FACT—	
disproves criminal intent.....	26
<i>See ERROR.</i>	
MOB—	
suppressing by troops.....	731
<i>See RIOT; SUPPRESSION.</i>	
MOCK AUCTIONS—See AUCTIONS.	
MONUMENTS—	
erected by U. S. coast survey, injuries to.....	615
MORALS, GOOD—	
crimes against, from Section 299 to.....	807
MOTION—	
to set aside indictment.....	995
to set aside indictment, when heard.....	997
effect of denial of such.....	997
for new trial, when made.....	1182
in arrest of judgment.....	1185
<i>ib</i>	1452
MURDER—See HOMICIDE.	
MUTILATION OF DOCUMENTS—	
penalty for.....	113
N	
NAMES—	
unauthorized use of, in prospectus of corporation.....	559
indictments found by fictitious.....	953
NATIONAL GUARD—	
failure to attend drill.....	652
same, by member.....	653
NAVIGABLE STREAMS—	
obstructing.....	611

NAVIGATION—	Section.
of harbors, etc.....	613
of Humboldt Bay, obstructing.....	612
NEGLECT—	
defined.....	7
NEW TRIAL—	
to be ordered when verdict is defective.....	1156
defined.....	1179
effect of.....	1180
when may be granted.....	1181
application for, when made.....	1182
where to be had when ordered on appeal.....	1261
grounds for, in Justice's Court.....	1451
NIGHT-TIME—	
defined.....	450
ib.....	463
NOLLE PROSEQUI—	
abolished.....	1386
NOTES—	
forgery of.....	470
possessing or receiving forged.....	475
making or uttering fictitious.....	476
NOTICE—	
of appeal, when by publication.....	1241
of application for bail in certain cases.....	1274
of application for pardon.....	1421
publication of such.....	1422
NOTICES—	
destroying or removing before proper time.....	616
NUISANCE—	
public, defined.....	370
unequal damage.....	371
maintaining.....	372
keeping pest houses in certain limits.....	373
putting dead animals in streets, rivers, etc.....	374
O	
OATH—	
defined.....	119
of office.....	120
irregularity in administering, no defense for perjury.....	121
taking extra-judicial.....	151
administering extra-judicial.....	152
of foreman of Grand Jury.....	903
of Grand Jurors.....	904

OATH— (<i>Continued.</i>)	Section.
foreman of Grand Jury may administer, to witnesses.....	918
of triers of challenges.....	1060
of officer in charge of jury.....	1121
ib	1128
ib	1440
of jurors in Justice's Court.....	1437
OBSCENE EXPOSURES—	
of person, books, etc., from Section 311 to.....	316
OFFICE—	
acting in, without qualifying.....	65
buying or selling appointments to	73
ib	74
wrongful exercise of	75
how forfeited	88
ib	98
ib	147
oath of	120
persons engaged in dueling disqualified from holding.....	228
removal from.....	661
OFFICERS, ADMINISTRATIVE—	
same provisions apply as to executive officers.....	77
being interested in contracts, buying scrip, etc.....	712
OFFICERS, EXECUTIVE AND MINISTERIAL—	
proceedings to impeach or remove, preserved.....	10
acting without having qualified.....	65
de facto, validity of acts.....	66
bribery of.....	67
asking or receiving bribes.....	68
resisting	69
extortion by.....	70
penalty for certain, dealing in scrip	71
penalty for being interested in certain contracts.....	71
presenting false claims to.....	72
receiving rewards for deputation	74
wrongfully exercising functions of office.....	75
refusal to surrender books to successor	76
how forfeits office.....	98
retaking goods from custody of.....	102
stealing, mutilating, etc., records	113
refusing to receive or arrest accused parties.....	142
receiving fee or reward for arresting fugitives.....	144
delaying to take person arrested before magistrate.....	145
making arrest without authority.....	146
inhumanity to prisoners	147
willfully resisting.....	148
assaults by, under color of authority.....	149

OFFICERS, EXECUTIVE AND MINISTERIAL— (Continued.) Section.

refusing to aid in making arrests.....	150
penalty for administering extra-judicial oaths.....	152
bribery of certain.....	165
false certificate by	167
disclosing fact of indictment found.....	168
omission of duty by.....	176
justifiable homicide by.....	196
duty of, to prevent duels.....	230
duty of, concerning gaming.....	335
refusing or neglecting to disperse unlawful assembly.....	410
refusing or neglecting to pay over public moneys.....	425
failing to pay over fines and forfeitures	427
obstructing, in collecting revenue.....	428
removal of, for violation of duty.....	661
proceedings to remove civil, how prosecuted.....	682
intervention of, to prevent crime.....	697
persons aiding in such cases justifiable.....	698
proceedings in overcoming resistance to process.....	723
to certify names of resisters.....	724
must command rioters to disperse.....	726
must arrest rioters if they refuse to obey.....	727
may order out military.....	728
armed force to obey what.....	730
suspension of, in cases of impeachment.....	750
when impeached, disqualified until acquitted.....	751
proceeding for removal of, Section 758 to.....	772
accusation	758
trial of.....	767
proceedings for removal of, before District Court.....	772
oath of, in charge of jury	1121
ib	1128

OFFICERS, JUDICIAL—

offering bribes to.....	92
receiving bribes.....	93
receiving excessive fees.....	94

OFFICERS, REMOVAL OF—

by impeachment, Section 737 to.....	753
See IMPEACHMENT.	
removal otherwise than by impeachment, Section 758 to.....	772
accusation by Grand Jury.....	758
form thereof	759
transmitted and copy served.....	760
if defendant does not appear.....	761
objection to accusation.....	762
form thereof	763
denial	764
objection overruled—answer.....	765

OFFICERS, REMOVAL OF— (<i>Continued.</i>)	Section.
proceedings on confession or issue.....	766
trial and proceedings on.....	767
ib	768
appeal, etc., to.....	772
OFFICERS OF STATE PRISON—	
Board of Directors.....	1573
President pro tem of the Senate, when to act as Director.....	1574
compensation of Directors.....	1575
Board must adopt rules and regulations.....	1576
Board may appoint Warden and other.....	1577
duty of clerks and other.....	1578
monthly reports of	1579
must keep accounts and report to Governor.....	1580
Board cannot contract debts.....	1585
further powers of the Board.....	1593
ib	1594
ib	1595
OMISSION OF DUTY—	
by public officer.....	176
when punishable.....	662
ORDER—	
for recommitment.....	1810
contents of such.....	1311
for conditional examination, when may be applied for.....	1336
such application, how made.....	1337
such application, to whom made.....	1338
such, when granted, contain what.....	1339
such, must direct what.....	1340
OVERT ACT—	
when necessary, to constitute conspiracy.....	184
P	
PANEL—	
Grand Jury, cause of challenge to.....	895
Grand Jury, effect of allowing challenge to.....	899
defined	1057
challenge to, defined.....	1058
challenge to, upon what founded.....	1059
challenge to, when and how taken.....	1060
See CHALLENGE; GRAND JURY; JURY.	
PAPER MONEY—	
issuing and circulating unlawfully.....	648
PARADE—	
failure to attend, by officer.....	652
same, by member.....	653

PARDON—	Section.
power of Governor to grant.....	1417
Governor to communicate to Legislature what granted.....	1419
report of case for, how and from whom required.....	1420
notice to District Attorney of application for pardon.....	1421
public notice of application for.....	1422
PARENT—	
deserting child.....	271
omitting to provide necessities for child.....	270
PARTIES TO CRIMES—	
classification of.....	30
PARTNERSHIP—	
fraud in special.....	358
PASSAGE TICKETS—	
value of, in certain cases.....	493
PAWNBROKERS—	
carrying on business without license.....	338
failing to keep register.....	339
charging unlawful rate of interest.....	340
selling before time of redemption expires.....	341
selling without notice.....	341
refusing to disclose particulars of sale.....	342
refusing to allow officer to inspect register.....	343
PEACE—	
public crimes against, from Section 403 to.....	419
security to keep.....	706
police to preserve, at public meetings.....	720
disturbing by noises or tumult.....	415
threatening, quarreling, etc.....	415
PEACE OFFICER—	
refusing to arrest accused parties.....	142
warrant of arrest must be directed to and executed by.....	816
what are.....	817
to, what warrants are to be directed.....	818
ib.....	819
arrest by.....	836
duty of, making arrest.....	848
ib.....	849
PENAL CODE—See Code.	
PERJURY—	
witness' testimony may be read against him on trial for.....	14
defined.....	118
irregularity in administering oath no defense.....	121

PERJURY— (<i>Continued.</i>)	Section.
incompetency of witness no defense for.....	122
when making depositions, etc., deemed complete.....	124
witness need not know that his evidence was material.....	123
stating what one does not know to be true.....	125
punishment of.....	126
subornation of.....	127
securing execution of innocent persons by.....	128
pleading, in an indictment for.....	906
PERSON—	
defined.....	7
who capable of crime.....	26
who liable to punishment.....	27
instigating incapables to crime.....	31
crimes against, from Section 261 to.....	305
indecent exposure of.....	306
other injuries to, from Section 346 to.....	367
informed against, from Section 703 to.....	711
PERSONAL PROPERTY—	
includes what.....	7
PERSONATION, FALSE— See FALSE PERSONATION.	
PEST HOUSES—	
establishing and keeping, in certain limits.....	373
PETIT LARCENY— See LARCENY.	
PETIT TREASON—	
abolished.....	191
PHOSPHORUS—	
use of, on land, prohibited in certain counties.....	630
PILOTS—	
acting as such without license.....	379
PHYSICIANS—	
malpractice by intoxicated.....	346
PIPES—	
injuring gas or water.....	624
PLEA—	
in case of impeachment, where entered.....	743
of guilty, to articles of impeachment, proceedings on.....	744
of guilty of accusation of officer, proceeding on.....	766
when put in.....	1003
different kinds of.....	1016
how put in and its form.....	1017
● of guilty, how put in and when may be withdrawn.....	1018
of not guilty, puts what in issue.....	1019
of not guilty, what evidence may be given under.....	1020
of not guilty, to be entered on refusal to plead.....	1024

PLEA— (<i>Continued.</i>)	Section.
of guilty, upon, Court to determine degree.....	1192
of corporations, to indictment.....	1396
of guilty, proceedings on.....	1445
PLEADING—	
form and rules of.....	948
indictment is first, by the people.....	949
of judgments.....	962
of private statutes.....	963
in indictment for libel.....	964
in indictment for forgery.....	965
in indictment for perjury or subornation of.....	966
in indictment for larceny or embezzlement.....	967
in indictment for exhibiting, etc., lewd books, etc.....	968
on part of defendant.....	1002
error or mistakes in.....	1404
See DEMURRER; POSTPONEMENT; VENUE; ARREST OF JUDGMENT, etc.	
POISON—	
putting, in food, medicine, or water.....	347
attempts to kill by administering.....	216
POLICE—	
organization and regulation of.....	719
force to preserve peace at public meetings, how ordered.....	720
POLICE COURT—	
defined.....	1461
proceedings in—	
See JUSTICE'S COURT.	
POLICE OFFICES—	
in incorporated towns, etc., duty of persons in charge of.....	1417
how organized.....	719
to preserve the peace.....	720
POLICE REGULATIONS—	
violation of certain.....	643
POSSE COMITATUS—	
refusal to join.....	150
POSTPONEMENT—	
of examination.....	861
ib.....	862
of trial.....	1052
ib.....	1438
PRESENTMENT—	
defined.....	916
must be by twelve Grand Jurors.....	981
must be presented to Court and filed.....	982

PRESENTMENT— (<i>Continued.</i>)	Section.
when bench warrant must issue on.....	933
proceedings on, Section 934 to	937
PRESUMPTION—	
of malice, in case of libel.....	250
of law, need not be stated in indictment.....	961
of innocence.....	1096
PRINCIPALS—	
who are.....	31
PRINTING—	
included in "writing"	7
PRISON—	
escape from.....	107
assisting prisoners to escape from	109
ib	110
jurisdiction of indictment for escape from	786
Grand Jury entitled to access to public.....	924
See STATE PRISON.	
PRISONERS—	
rescuing from custody.....	101
escaping from State Prison	105
escape from other than a State Prison.....	107
officers permitting, to escape.....	108
assisting, to escape	109
ib	110
inhumanity to.....	147
to be classified, in County Jails.....	1599
bringing from State to other prison	1567
disposition of insane.....	1582
committed, must actually be confined.....	1600
committed by U. S. Courts, must be received	1601
when may be taken to jail in contiguous county.....	1603
when to be returned to proper county	1606
may be removed in case of fire or pestilence.....	1607
ib	1608
not to be received at County Jails, on civil process.....	1612
conveyed to State Prison, compensation for	1586
See CONVICT.	
PRIVATE STATUTES—	
how pleaded.....	963
PRIZE FIGHT—	
penalty for engaging in.....	412
persons present at.....	413
leaving the State to engage in.....	414

INDEX.

433

PROCESS—	Section.
resisting execution of, in county proclaimed in insurrection	411
power of officers to overcome resistance to execution of	723
officers must certify names of resisters	724
when military to be ordered to aid in executing	725
Sheriff not to receive prisoner on civil	1612
PROHIBITED ACTS—	
for which no punishment prescribed, misdemeanors	177
PROPERTY—	
crimes against, from Section 447 to	591
fraudulent concealment of, by debtor	154
fraudulent concealment of, by defendant	155
refusing to give Assessor list of	429
larceny of lost	485
selling hypothecated or pledged, by warehouseman	581
receipt for, taken on search warrant.	1535
such, how disposed of	1536
inventory of such must be taken	1537
to whom such inventory must be delivered	1538
when to be restored to person from whom taken	1540
receiving, in false character	530
of State crimes against, from Section 424 to	443
PROSECUTION—	
separate and distinct	175
no person subject to a second, for same offense	687
autrefois convict and acquit bar to, in certain cases	798
ib	794
must be had in the name of the people	684
for murder, may be commenced at any time.	799
what must be by indictment	888
what must be by accusation or information	889
order to set aside indictment no bar to another	999
demurrer allowed, bar to another	1008
order of compromise, bar to another	1378
dismissal of action in misdemeanor, bar to	1387
PUBLIC ADMINISTRATOR—	
neglect or violation of duty by	143
PUBLICATION—	
for not fighting a duel	229
libelous, defined	252
privileged	254
indecent	311
proceedings regarding indecent, from Section 311 to	316
of offers to insure lottery tickets	324
of sealed letters	618
pleading in indictment for exhibiting or selling obscene	998

PUBLICATION— (<i>Continued.</i>)	Section.
of notice of application for pardon.....	1422
of the Codes.....	4494

PUBLIC DOCUMENTS—See DOCUMENTS.**PUBLIC MONEYS—**

• officer refusing to pay over	425
defined	426

PUBLIC OFFENSE—See CRIMES.**PUBLISHERS—**

liability of.....	254
-------------------	-----

PUNISHMENT—

how determined.....	13
who are liable to.....	27
grounds for mitigation of.....	513
ib	658
summary inquiry for mitigation or aggravation of.....	1204
proof of facts in mitigation or aggravation of.....	1205
one act punished by different provisions.....	654
under foreign law.....	655
of contempts.....	657
none for omission of duty, when	662
attempts to commit crimes	663
ib	664
restrictions on.....	665
of second offenses.....	666

PURCHASING BY OFFICER—

scrip, etc.....	71
-----------------	----

Q**QUARANTINE LAWS—**

violation of.....	376
-------------------	-----

QUICKSILVER—

counterfeiting stamps.....	366
selling debased.....	367

R**RACING—**

on highways.....	394
------------------	-----

RAFTS—

• burning or injuring.....	608
----------------------------	-----

RAPE—

assault with intent to commit.....	220
defined	261
when physical ability must be proved.....	262
penetration sufficient.....	263
punishment of.....	264

RAILROAD—	Section.
engineer neglecting to sound whistle or bell, crossing roads, etc.....	390
intoxication of certain employes of.....	391
placing passenger in front of freight cars.....	392
violation of duties by employes of.....	393
officer overcharging.....	525
RAILROAD COMPANY—See CORPORATIONS.	
RAILROAD TICKET—See PASSAGE TICKET.	
RECEIVING—	
stolen property.....	496
ib	497
RECEIPT—	
• issuing fictitious warehouse.....	578
erroneous, issued in good faith.....	579
duplicate must be marked "duplicate".....	580
warehouse, must be canceled on redelivery.....	582
by officers, taking money, etc., from persons arrested.....	1412
for property taken on search warrant.....	1535
false, for poll taxes, delivering.....	431
false, for poll taxes, possessing.....	432
RECOMMITMENT—	
of defendant, after admission to bail.....	1310
contents of order for.....	1311
pursuant to order for, defendant may be arrested.....	1312
if for failure to appear for judgment.....	1313
if for other cause.....	1314
RECORDING—	
offering false or forged instruments for.....	115
verdict.....	1163
RECORD OF ACTION—	
what to be entered in.....	1207
roll of	1207
RECORDS—	
larceny, mutilation, etc., of.....	113
ib	114
forgery of.....	470
making false entry in	471
adding names to jury lists.....	116
falsifying jury lists.....	117
REFEREE—	
giving bribes to	92
receiving bribes.....	93
improper attempts to influence.....	95
misconduct of	96

REGISTRATION—	Section.
fraudulent	42
refusal to obey summons of Board of	44
RELIGION—	
crimes against	299
ib	300
limitation to action	301
REMITTITUR—	
of case, from appellate Court	1264
REMOVAL FROM OFFICE—	
of civil officers	
ib	
ib	
of District Attorney	771
by summary proceedings before District Court	772
for violation of duties	661
for inhumanity to prisoners	147
REMOVAL OF ACTION—	
before trial, when may be had	1033
application for	1034
application for, when granted	1035
order for	1036
proceedings on, when defendant in custody	1037
authority of Court to which it is removed	1038
REPRIEVES—	
power of Governor to grant	1417
Governor must communicate to Legislature, granted	1419
RESCUE—	
from custody	101
retaking after	854
may break doors to retake	855
RESISTANCE—	
willful, to officers	148
to execution of process	411
to federal laws	731
Marshal to act, how	731
See LAWFUL RESISTANCE.	
RESTRAINT—	
what degree of, allowed before conviction	688
what degree of, allowed of party arrested	835
RESUBMISSION—	
of case, after indictment set aside	997
ib	998
ib	999

INDEX.

437

RESUBMISSION— (<i>Continued.</i>)	Section.
when demurrer allowed	1008
ib	1009
ib	1010
REVENUE—	
obstructing officer in collecting.....	424
offenses by officers, relating to	424
collector of, refusing to allow inspection of books.....	440
Board of Examiners neglecting certain duties concerning.....	441
REWARDS—	
for deputation, officers taking.....	74
for apprehension of fugitives.....	1547
ib	1558
RIOT—	
defined	404
punishment of.....	405
justifiable homicide committed in repressing.....	197
remaining at, after warning to disperse.....	409
magistrate refusing to disperse.....	410
officer to certify names of resisters	724
magistrate must command, to disperse.....	726
officer may order out troops.....	728
armed force to suppress, must obey whom.....	730
conduct of troops to suppress	731
power of officer to suppress.....	723
ROAD— See HIGHWAY.	
ROBBERY—	
defined.....	211
what fear may be an element in	212
punishment of.....	213
assault with intent to commit.....	220
jurisdiction of indictment for, in certain case	736
ROLL—	
judgment, what to contain.....	1207
ROUT—	
defined.....	406
punishment of.....	408
See UNLAWFUL ASSEMBLY.	
RULE—	
of decision, common law of England is, when.....	4468
when laws of this State silent.....	4468
of construing the Codes	4478
as to laws of 1872.....	4479
of construing Codes, one with another	4480
of construing conflicts in Titles	4481

RULE— (<i>Continued.</i>)	Section.
of construing conflicts in Chapters.....	4482
of construing conflicts in Articles	4483
of construing conflicts in sections	4484

S

SAILOR BOARDING HOUSES—	
violating Code provisions concerning	643
SAFETY—	
crimes against public, from Section 368 to.....	399
SALVAGE—	
detaining wrecked property after, paid.....	544
SALMON—	
protection of.....	634
destroying, etc.....	635
SAVINGS BANK—	
officer of, overdrawing his account.	108
SEA LIONS, SEALS—	
killing, within certain limits.....	599
SEALS—	
defined.....	7
forgery of public and corporate.....	472
SEAMEN—	
enticing to desert.....	644
harboring deserting.....	645
SEARCH WARRANT—	
maliciously procuring.....	170
defined.....	1523
upon what grounds, may issue.....	1524
upon what grounds, not to issue.....	1525
complainant must be examined on oath.....	1526
deposition, what to contain.....	1527
when to issue.....	1528
form of.....	1529
by whom served	1530
ib	1531
when may be served at night.....	1533
within what time must be executed	1534
officer must give receipt for property taken.....	1535
such property, how disposed of.....	1536
return of.....	1537
if grounds of, are controverted.....	1539
to be returned by magistrate to County Court.....	1541

SECOND OFFENSE—	Section.
how punished, after former conviction.....	666
how punished, after conviction of attempt to commit felony.....	667
SECURITY—	
To KEEP THE PEACE—	
when required	706
effect of giving, or refusing to give.....	707
person committed for not giving, how discharged.....	708
must be filed in Clerk's office.....	709
when required, for assault in presence of Court.....	710
when broken.....	711
breach of, how prosecuted.....	712
evidence of breach of.....	713
when not to be required	714
FOR APPEARANCE OF WITNESSES—	
when taken and required	878
ib	879
infants and married women may be required to give.....	880
on refusing to give, witness to be committed.....	881
witness, when unable to give, what	882
SEDUCTION—	
of women, for prostitution.....	266
evidence on trial for.....	1108
of women under eighteen, note to Section	266
SENATE—	
to try impeachments	738
on impeachments, must be sworn.....	745
two thirds of, necessary to convict, on impeachment.....	746
SENTENCE—	
for life.....	671
ib	672
defendant must be present for.....	1193
to be brought before Court for.....	1194
if he is on bail and does not appear for.....	1195
may forfeit bail and issue bench warrant.....	1195
arraignment for sentence.....	1200
what may be shown against	1201
extent of punishment, how considered.....	1203
suspended only by order Supreme Court or Judge.....	1243
SEPULTURE, ETC.—	
violating, Section 290 to.....	296
SERVICE—	
of articles of impeachment on defendant.....	740
such, how made.....	741
of warrant of arrest, in another county.....	820
of bench warrant.....	936

SERVICE— (<i>Continued.</i>)	Section.
of bench warrant.....	983
ib	1196
of notice of appeal.....	1241
of notice of application for bail.....	1274
of subpoena	1328
of summons against corporations	1392
of writ of habeas corpus.....	1478
of Coroner's warrant.....	1519
of search warrant.....	1530
ib	1531
ib	1532
SETTING ASIDE INDICTMENT—	
when on motion.....	995
objections, when waived.....	996
when heard.....	997
effect of resubmission.....	998
SHERIFF—	
suffering convicts to escape.....	108
refusing to receive or arrest parties accused of crime.....	142
duty of, on receiving copy of judgment of imprisonment.....	1216
warrant for execution of death sentence to be delivered to.....	1217
duty of, at execution of death sentence.....	1229
duty of, after execution of death sentence	1230
to receive prisoners committed by U. S. Courts.....	1601
answerable for safe keeping of such.....	1602
papers served on, for prisoner.....	1609
to receive all persons duly committed	1611
when not to receive prisoners	1612
how compensated for transporting prisoners to State Prison.....	1586
SIGNALS—	
removing, erected by U. S. Coast Survey	615
SIGNAL LIGHTS—	
masking, removing, or exhibiting false.....	610
SIGNATURE—	
defined.....	7
obtaining, by extortionate means.....	522
SODOMY— See CRIME AGAINST NATURE.	
STATE—	
defined.....	7
STATE PRISON—	
escape from.....	105
attempt to escape from	106
unlawful communication with convict in.....	171
keeping liquor within two miles of.....	172

STATE PRISON— (<i>Continued.</i>)	Section.
U. S. prisoners to be received at.....	1581
disposition of insane prisoners	1582
fund of.....	1583
fund of, how disbursed	1584
transporting prisoners to, compensated, how	1586
See OFFICERS OF STATE PRISON; CONVICT.	
STATUTE—	
law defined.....	4466
how expressed	4467
common, the rule when.....	4468
express repeal of	4504
ib	4505
remaining unrepealed.....	23
STAY OF PROCEEDINGS—	
pending examination on commission.....	1354
when doubt arises as to sanity of defendant.....	1368
STEAMBOATS—	
mismanagement of.....	348
STEAM BOILERS AND ENGINES—	
mismanagement of.....	349
STOCK RAISERS—	
protection of, continued Acts, Subd. 5.....	23
STOLEN PROPERTY—	
disposal of	1407
ib	1408
ib	1409
ib	1410
ib	1411
SUBORNATION OF PERJURY— See PERJURY.	
SUBPCENA—	
when must issue	864
ib	1459
defined, and who may issue.....	1326
ib	1564
form of.....	1327
disobedience to.....	1331
SUMMONS—	
against corporations.....	1390
form of.....	1391
service of.....	1392
SUNDAY—	
certain amusements prohibited on.....	299
• keeping open places of business on.....	300
ib	301

SUPPRESSION OF RIOTS, Etc.—	Section.
proceedings in, from Section 723 to.....	733
SUPREME POWER—	
of the State, how expressed.....	4467
SURRENDER OF DEFENDANT—	
by bail, how made.....	1300
defendant may be arrested for purpose of.....	1301
money to be refunded on	1302
SUSPENSION—	
of officers, by Court of impeachment.....	750
of capital execution	1220
T	
TAX COLLECTOR—	
obstructing, in collecting taxes.....	428
selling undated foreign miners' license.....	433
TAXES—	
obstructing officer in collecting.....	428
false statements concerning.....	430
delivering false receipt for poll and license.....	431
having in possession false receipts for poll and license.....	432
blank for license, unlawfully having.....	432
TELEGRAPH—	
forgery of messages.....	474
injury to line.....	591
disclosing contents of message.....	619
altering messages	620
opening sealed message.....	621
neglect or postponement of regular order of messages	638
operator or agent using information from messages.....	639
clandestinely learning contents of message.....	640
bribing operator.....	641
operator intoxicated.....	391
arrest by.....	850
certified copy of warrant served by.....	851
TESTIMONY—See WITNESS.	
THEATERS—	
employing women to sell liquor at.....	303
where liquor is sold, performance prohibited on Sunday.....	299
THREATENED OFFENSE—	
information of.....	701
examination of complainant and witnesses.....	702
when commission of, feared, warrant of arrest to issue.....	703
person complained of, when to be discharged.....	705
security to keep the peace, when required.....	706

THREATENING LETTERS—	Section.
sending, to officers	650
sending, with intent to commit extortion.....	523
THREATS—	
using, with intent to extort money, etc.....	523
ib	524
what may constitute extortion.....	519
See DURESS.	
TIME—	
of committing offense need not be stated in indictment.....	955
TITLE—	
of volume	1
TOLL BRIDGES— See BRIDGES.	
TOLL GATES—	
injury to.....	589
TOLLS—	
unlawfully collecting certain, in San Francisco.....	642
TOOLS—	
having burglarious.....	466
having counterfeiting.....	480
with intent to assault.....	467
TOMBS—	
defacing in cemeteries.....	296
TRADE MARKS—	
counterfeiting.....	350
selling goods which bear counterfeited	351
definition of.....	353
definition of "counterfeited"	352
refilling casks, etc., bearing.....	354
TRANSMISSION—	
of indictments from County to District Courts	1028
of indictment against County Judge.....	1029
of indictments to Municipal Criminal Court.....	1080
of papers, on removal of action.....	1038
TREASON—	
in what, consists.....	37
who only can commit.....	37
punishment of	37
misprision of.....	38
petit, abolished	191
jurisdiction of indictment for, in certain case.....	788
evidence on trial for.....	1103
power of Governor on conviction for.....	1418
duty of Legislature on conviction for.....	1418

TREASURER—	Section.
State violating laws relative to State Board of Examiners.....	441
State or county violating revenue law.....	424
TRESPASS—	
certain, misdemeanors.....	602
TRIAL—	
defendant entitled to speedy and public	686
mode of.....	1041
when presence of defendant necessary on.....	1043
ib	1434
defendant entitled to two days to prepare for.....	1049
postponement of.....	1052
ib	1433
order of.....	1093
when order of, may be departed from.....	1094
number of counsel who may argue on.....	1095
separate	1098
rules of evidence on.....	1102
if District Attorney fails to attend	1130
in Justice's Court, how conducted	1438
must be under indictment	888
of officers by accusation.....	889
where found	890
impeachments, where	738
See IMPEACHMENT; OFFICERS, REMOVAL OF.	
TRIERS—	
of challenges, how appointed.....	1079
oath of.....	1080
proceedings by, Section 1081 to.....	1082
TROOPS—	
to be ordered out to suppress riots.....	725
officers may order out, when.....	728
commanding officer of.....	729
to obey whose orders.....	730
conduct of.....	731
TROUT—	
protection of, Act continued in force, Subdivision 9.....	23
taking or catching at certain times.....	631
who takes other than by hook in certain counties.....	632
who takes by nets, etc., in certain counties.....	633
U	
UMPIRE—See ARBITRATOR.	
UNDERTAKING—See SECURITY.	
UNITED STATES—	
laws of, when resisted, etc.....	731
Marshal may call for the National Guard ..	731

INDEX.

445

UNLAWFUL ASSEMBLY—

Section.

defined.....	407
punishment of.....	408
remaining at, after warning to disperse.....	409
magistrate refusing or neglecting to disperse.....	410
See Riot; Rout.	

USURY—

by pawnbrokers.....	340
---------------------	-----

V

VAGRANTS—

who are, and punishment of.....	647
---------------------------------	-----

VENUE—

application for change of	1034
ib	1035
order for change of.....	1036
when granted.....	1431
when granted, papers to be transmitted	1432
proceedings on change of	1432

VARIANCE—

all facts may be proved.....	1020
acquittal on ground of.....	1021
in indictment and proof.....	1021

VESSELS—

defined.....	7
captain or other officer willfully destroying.....	539
other persons willfully destroying.....	540
fraudulently fitting out	541
setting adrift.....	608
mooring to buoys.....	614
jurisdiction of offenses committed on.....	788

VERDICT—

making promise to give a certain.....	96
no conviction unless by.....	
of triers of challenge.....	1085
when jury has been discharged without rendering.....	1143
ib	1444
return of jury.....	1147
appearance of defendant at rendering of.....	1148
manner of taking.....	1149
ib	1441
may be general or special.....	1150
general.....	1151
special.....	1152

VERDICT— (<i>Continued.</i>)	Section.
special, how rendered.....	1153
form of special.....	1154
judgment on special.....	1155
when special defective.....	1156
jury to find degree of crime.....	1157
to find previous conviction.....	1158
of lesser offense, or attempt.....	1159
as to some defendants.....	1160
ib.....	1442
when Court may direct reconsideration of.....	1161
when judgment may be given on informal.....	1162
polling the jury.....	1163
recording.....	1164
of acquittal, defendant to be discharged on.....	1165
proceedings on general or special.....	1166
of jury, on question of insanity.....	1370
VIEW OF PREMISES—	
when and how conducted.....	1120
W	
WARDEN—	
of prison, to deliver receipt for prisoner.....	1216
See OFFICER OF STATE PRISON.	
WAREHOUSE RECEIPT—	
issuing fictitious.....	578
must be canceled on redelivery of property.....	582
WARRANT, CORONER'S—	
when to issue.....	1517
form of.....	1518
service of.....	1519
WARRANT OF ARREST—	
must issue, when commission of offense feared.....	703
must issue, when offense has been committed.....	812
form of.....	814
ib.....	1427
must specify what.....	815
to whom directed.....	816
ib.....	818
ib.....	819
when and how executed in another county.....	819
indorsement on, for service in another county, etc.....	820
if for felony, defendant to be taken before magistrate issuing.....	821
if bail is allowed, it must be certified on.....	823
when magistrate who issued cannot act.....	824
must state what, when offense triable elsewhere.....	827
duty of officer executing.....	828

WARRANT OF ARREST— (<i>Continued.</i>)	Section.
arrest made with.....	842
ib.....	848
ib.....	849
when must issue on complaint.....	1427
for fugitives from justice.....	1649
WARRANT, SEARCH— See SEARCH WARRANT.	
WATER—	
stealing	499
drawing, after works have been closed.....	625
Commissioners Act continued in force, Subdivision 14	28
WATER PIPES—	
injuring or obstructing.....	624
WAYS, PRIVATE—	
injuring.....	588
WEAPON, DEADLY— See DEADLY WEAPON.	
WEIGHT—	
falsely increasing, etc., in packages	381
See FALSE WEIGHTS.	
WILLFULLY—	
defined	7
WILLS—	
defined	7
forgery of.....	470
WITNESS—	
testimony of, may be read against him on prosecution for perjury ..	14
refusing to attend and testify before legislative committee.....	87
incompetency of, no defense in prosecution for perjury	122
when need not know his testimony is material.....	123
stating that which he does not know to be true	125
deceiving	136
bribing.....	137
receiving or offering to take bribes.....	138
refusing to be sworn or testify in Court.....	166
to a duel, privilege of.....	232
to gambling, refusing or neglecting to attend trial.....	333
suspension of civil rights does not bar convict from being.....	674
deposition of, to threatened offense, must be taken.....	702
deposition of, to committed offense, must be taken.....	811
depositions of, to be read to defendant on examination	864
examination of defendant's.....	866
exclusion and separation of.....	867
testimony, how taken and authenticated.....	869
undertaking of, to appear, when and how taken	878
security for the appearance of, when required.....	879

WITNESS— (<i>Continued.</i>)		Section.
certain, may be required to give security.....		880
on refusal to give security, may be committed.....		881
unable to give security, may be conditionally examined.....		882
foreman of Grand Jury may administer oath to.....		918
names of, to be inserted at foot of indictment.....		943
discharging one of several defendants for.....		1099
ib.....		1100
effect of doing so.....		1101
juror, when used as a.....		1120
who are competent.....		1321
when husband and wife are incompetent.....		1322
when defendant is incompetent.....		1323
compelling attendance of.....		1326
ib.....		1330
payment of expenses of, in certain case.....		1329
disobeying subpoena.....		1331
on failing to appear, undertaking forfeited.....		1332
to be examined conditionally.....		1335
See EXAMINATION, CONDITIONAL; EXAMINATION ON COM- MISSION.		
WOMEN—See FEMALE.		
WOODS—		
setting on fire.....		384
WORDS—		
construction of words used in an indictment.....		957
construction of words used in this Code.....		7
WORKS OF ART AND LITERATURE—		
injuring or destroying.....		622
ib.....		623
WRECKED PROPERTY—		
defacing marks on.....		355
detaining, after salvage paid.....		544
unlawfully taking or having in possession.....		545
WRITING—		
includes "printing".....		7
Y		
YEAR—		
defined.....		7

1



3 6105 063 704 865

